9–1–05 Thursday
Vol. 70 No. 169 Sept. 1, 2005

Pages 51999–52282

Federal Register

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

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3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19694; Directorate Identifier 2004–CE–41–AD; Amendment 39–14240; AD 2005–17–19]

RIN 2120–AA64

Airworthiness Directives; Cirrus Design Corporation Models SR20 and SR22 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Cirrus Design Corporation (CDC) Models SR20 and SR22 airplanes. This AD requires you to measure and adjust the crew seat break-over bolts and to replace the crew seat recline locks on both crew seats. This AD results from CDC discovering that the crew seats, under emergency landing dynamic loads, may fold forward at less than the 26 g required by the regulations. We are issuing this AD to prevent the crew seats from folding forward during emergency landing dynamic loads with consequent occupant injury.

DATES: This AD becomes effective on October 13, 2005.

As of October 13, 2005, the Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737; Internet address: *http://www.cirrusdesign.com.*

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19694; Directorate Identifier 2004–CE–41–AD.

FOR FURTHER INFORMATION CONTACT ONE OF THE FOLLOWING:

—Wess Rouse, Small Airplane Project Manager, ACE–117C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: 847–294–8113; facsimile: (847) 294–7834; email: *Wess.Rouse@faa.gov;* or

—Angie Kostopoulos, Composite Technical Specialist, ACE–116C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–7426; facsimile: (847) 294–7834; e-mail: *Evangelia.Kostopoulos@Faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Cirrus Design Corporation (CDC) performed dynamic seat testing on Models SR20 and SR22 airplanes. CDC found that, under emergency landing dynamic loads, the crew seats may fold forward at less than the 26 g required by 14 CFR Section 23.562(b)(2).

What is the potential impact if FAA took no action? If not prevented, the crew seats folding forward during emergency landing dynamic loads could result in occupant injury.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cirrus Design Corporation (CDC) Models SR20 and SR22 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 13, 2005 (70 FR 2370). The NPRM proposed to measure and adjust the crew seat break-over bolts and to replace the crew seat recline locks on both crew seats. Since issuing the earlier NPRM, FAA received and evaluated new service information that increases the serial number effectivity of the earlier NPRM. Since the change imposed an additional burden over that proposed in the earlier NPRM, we reopened the comment period to allow the public additional time to comment on the proposed AD. The supplemental NPRM was published in the **Federal Register** on June 9, 2005 (70 FR 33724).

Comments

Was the public invited to comment? We again provided the public the opportunity to participate in developing this AD. We received no comments on the supplemental NPRM or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 1,501 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? CDC will provide warranty credit for service bulletins SB A2X–25–08, dated June 22, 2004, and SB 2X–25–06 R4, dated May 5, 2005. This AD will not have a labor or parts cost for the owner or operator.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106 describes the authority of the FAA

Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Impact) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19694; Directorate Identifier 2004–CE–41–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005–17–19 Cirrus Design Corporation: Amendment 39–14240; Docket No. FAA–2004–19694; Directorate Identifier 2004–CE–41–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 13, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) SR20	1005 through 1455.
(2) SR22	0002 through 1044.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of discovering that the crew seats, under emergency landing dynamic loads, may fold forward at less than 26 g required by the regulations, 14 Code of Federal Regulations (CFR) Section 23.562(b)(2). The actions specified in this AD are intended to prevent the crew seats from folding forward during emergency landing dynamic loads with consequent occupant injury.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) For Models SR20, serial numbers 1005 through 1423, and SR22, serial numbers 0002 through 0972, do the following actions: (i) Move the lower portion of the crew seat upholstery upward to expose the seat frame and locking mechanism. Measure the clearance between the break-over bolt and the seat frame for a clearance that meets the requirements in the service bulletin. (ii) If the clearance does not meet that specified in the service bulletin, do the crew seat break-over bolt adjustment and re-cover the crew seat frame and locking mechanism with the upholstery. (iii) If the clearance does meet that specified in the service bulletin, re-cover the crew seat frame and locking mechanism. (iv) Repeat the above actions for the opposite crew seat	Within 50 hours time-in-service (TIS) or within 180 days, whichever occurs first after October 13, 2005 (the effective date of this AD).	Follow Cirrus Design Corporation Alert Service Bulletin SB A2X–25–08, dated June 22, 2004.

Actions	Compliance	Procedures
(2) For Models SR20, serial numbers 1005 through 1455, and SR22, serial numbers 0002 through 1044, do the following actions: (i) Identify whether the recline lock is secured with two bolts or three bolts. (ii) If the recline locks are secured with two bolts, remove the existing recline locks and replace with the new recline locks kit, kit number 70084–001. (iii) If the recline locks are secured with three bolts, remove existing recline locks and replace with the new recline locks kit, kit number 70084–002. (iv) Check break-over pin alignment and adjust as necessary. (v) Check that the locks engage with the break-over bolts with the seat in the full recline position. If full seat recline is not possible or difficult to engage, grinding of the lower aft seat frame is necessary. (vi) Repeat the above actions for the opposite crew seat	Within 50 hours TIS or within 180 days, whichever occurs first after October 13, 2005 (the effect9ve date of this AD).	Follow Cirrus Design Corporation Service Bulletin SB 2X–25–06 R4, revised May 5, 2005.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Chicago Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, please contact one of the following:

(1) Wess Rouse, Small Airplane Project Manager, ACE–117C; Chicago Aircraft Certification Office, 2300 East Devon Avenue, Roon 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; facsimile: (847) 294–7834; e-mail: *Wess.Rouse@Faa.gov*; or

(2) Angie Kostopoulos, Aerospace Engineer, ACE–116C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–7426; facsimile: (847) 294–7834; e-mail: *Evangelia.Kostopoulos@Faa.gov.*

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Cirrus Design Corporation Alert Service Bulletin SB A2X–25–08, dated June 22, 2004; and Service Bulletin SB 2X–25–06 R4, revised May 5, 2005. The Director of the Federal Register approved the incorporation by reference of these service bulletins in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737; Internet address: *http://www.cirrusdesign.com.* To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19694; Directorate Identifier 2004–CE–41–AD.

Issued in Kansas City, Missouri, on August 19, 2005.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16980 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–61–AD; Amendment 39–14243; AD 2005–18–03]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney (PW) PW2000 series turbofan engines. That AD currently requires revisions to the engine manufacturer's time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part opportunity. This AD requires modifying the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. This AD results from an FAA study of in-service events involving uncontained failures of critical rotating engine parts that indicates the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective February 28, 2006.

ADDRESSES: You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7758, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to PW PW2000 series turbofan engines. We published the proposed AD in the **Federal Register** on August 18, 2004 (69 FR 51198). That action proposed to require modifying the TLS of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate the additional inspection requirements.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through

Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Increase the Costs of Compliance

Several commenters express concern about the capital investment required to eddy-current inspect the bolt holes of the HPT stage 2 hub. They suggest the NPRM fails to recognize the substantial up-front investment to get the equipment needed for the eddy current inspection. In addition, one commenter states we should increase the Costs of Compliance because the complex inspections will require several full-time, specially trained operators. We don't agree. The AD doesn't require air carriers to invest in tooling and equipment or hire more personnel to comply with the proposed AD. The AD requires adding the new eddy current inspection to the TLS of the engine manufacturer's manual, and to the air carriers' approved maintenance manuals. Operators can choose to buy equipment to perform the inspection, or they may send the disk to an approved service provider.

Request for an Annual Cost for the Recurring Inspections

One commenter states that the NPRM implies a onetime cost for the inspection, but that it is actually a recurring cost. We don't agree. The Costs of Compliance section of the NPRM states the estimated cost for each inspection on each engine. We used the current shop visit rate for the PW2000 engine to calculate the recurring cost for each engine on a yearly basis. The air carriers can use their own specific costs for their individual PW2000 fleet to calculate their inspection cost.

Question About the Actual Cost for the Inspection

One commenter states that the actual costs for the inspections are significantly different from the costs we specified in the NPRM. We don't agree. We based our cost estimate on actual inspection times provided by the engine manufacturer. We understand that cost estimates can vary depending on the service provider. However, we consider basing our estimate on inspection times provided by the engine manufacturer to be the most accurate approach to estimating the cost to comply with the AD.

Concern About Increased Inventory Levels for Parts Not Reflected in the Cost Estimate

One commenter suggests that quoted turnaround time for the inspection will make air carriers increase inventory levels for the affected parts. The commenter also feels the cost estimate doesn't reflect the cost of the increased inventory. We don't agree. The proposed AD requires adding the new eddy current inspection for the bolt holes in the HPT stage 2 hub to the TLS of the engine manufacturer's manual, and to the air carrier's approved maintenance manuals. The AD doesn't require air carriers to increase spare parts inventory levels or specify the logistics of performing the inspections.

Requests To Allow Operators To Use Equivalent Equipment To Perform the Inspections

Two commenters ask that we allow them to use equipment that is equivalent to the inspection equipment specified by the engine manufacturer. The commenters ask us to allow them to use equipment they already use for other mandated inspections. The commenters suggest that using the single-source equipment specified by the manufacturer will cause an undue burden. We don't agree. We don't intend that this proposed AD specify only one method, or limit the inspection to one method of inspection. This AD requires the operators to revise the ALS to include a mandatory opportunistic inspection. The engine manufacturer developed a validated inspection procedure using specific tooling and equipment that provides an acceptable inspection technique. However, operators may still seek approval from the manufacturer to use alternative tools or methods of inspections other than those specified in the engine manual. Providing flexibility for the engine manufacturers to revise their engine manuals as they fine-tuned their inspection methods and developed alternatives is part of the outcome of working with the Air Transportation Association, operators, and manufacturers.

Request To Extend the Compliance Time of the Final Rule

Two commenters ask that we extend the compliance of the AD to allow an additional six to eight months to procure the eddy current inspection equipment and train personnel. We agree. We changed the effective date from 30 days after publication in the **Federal Register** to 180 days after publication in the **Federal Register**.

Request To Provide Special Eddy Current Inspection Instructions

Two commenters ask that we provide clear instructions regarding special handling of the parts and the complexity and sensitivity of the eddy current inspection equipment. We partially agree. We agree that eddy current inspections of aircraft engine parts require special inspection procedures to perform the inspections. However, this AD only requires the operators add eddy current inspection of the bolt holes of HPT stage 2 hub bolt holes to the ALS of the manufacturer's engine manual as a mandatory inspection. The engine manufacturer and the suppliers of the eddy current inspection equipment will provide the special procedures and requirements for the actual inspections.

Removed PW2240 Series and PW2337 Series Engine Models From the Applicability

On January 6, 2005, we removed PW engine models PW2240 and PW2337 from the type certificate data sheet for the PW2000 series engine type certificate. We removed reference to them from paragraph (c) of this AD.

Corrected a Typographical Error

One commenter found a typographical error in paragraph (f)(1)(b). We specified inspection 72–52–00. The inspection should be 72–52–16. We corrected paragraph (f)(1)(b) in the final rule.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 938 Pratt & Whitney PW2000 series turbofan engines of the affected design in the worldwide fleet. We estimate that this AD will affect 777 engines installed on airplanes of U.S. registry. We also estimate that it will take about 4 work hours per engine to perform the inspections, and that the average labor rate is $65 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part costs are involved. Based on these figures, we estimate the total additional cost per engine per shop visit to be $260. Based on the current PW2000 engine shop visit rate, we

estimate the total additional cost for the PW2000 fleet to be $80,860 per year.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 98–ANE–61–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12778, (67 FR 40143, June 4, 2002) and by adding a new airworthiness directive, Amendment 39–14243, to read as follows:

2005–18–03 Pratt & Whitney: Amendment 39–14243. Docket No. 98–ANE–61–AD.

Effective Date

(a) This AD becomes effective February 28, 2006.

Affected ADs

(b) This AD supersedes AD 2002–12–06.

Applicability

(c) This AD applies to Pratt & Whitney (PW) PW2037, PW2040, PW2043, PW2143, PW2643, PW2037D, PW2037M, and PW2040D series turbofan engines. These engines are installed on, but not limited to Boeing 757 series and Ilyushin IL–96T series airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of PW PW2000 series turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Within 30 days after the effective date of this AD, revise the manufacturer's Time Limits section (TLS) of the manufacturer's engine manual, as appropriate for PW PW2037, PW2040, PW2043, PW2143, PW2643, PW2037D, PW2037M, and PW2040D series turbofan engines, and for air carriers revise the approved continuous airworthiness maintenance program, by adding the following:

''MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in PW2000 Engine Manuals 1A6231 and 1B2412:

Nomenclature	Part No.	EM Manual section	Inspection/check	Subtask
Hub, LPC Assembly	ALL	72–31–04	–06.	
Disk, HPT 1st Stage	ALL	72–52–02	FPI entire disk per 72–52–00, Inspection/Check–02 ..	72–52–02–230–007
Hub, HPT 2nd Stage	ALL	72–52–16	(a) FPI entire hub per 72–52–00, Inspection/Check–02.	72–52–16–230–007
			(b) Eddy-current inspect hub bolt holes per 72–52–16, Inspection/Check–05.	72–52–16–200–005
Hub, HPC Front	ALL	72–35–02	–05.	
Disk, HPC Drum Rotor Assembly (7–15).	ALL	72–35–03	–04.	
Disk, HPC Drum Rotor Assembly (16–17).	ALL	72–35–10	–05.	
Disk, HPC 16th Stage	ALL	72–35–06	–04.	
Disk, HPC 17th Stage	ALL	72–35–07	–04.	
HPC Turbine Drive Shaft Assembly	ALL	72–35–08	–05.	
LPC Drive Turbine Shaft	ALL	72–32–01	–06.	
Hub, Turbine Rear	ALL	72–53–81	–06.	
Disk, LPT 3rd Stage	ALL	72–53–31	–01.	
Disk, LPT 4th Stage	ALL	72–53–41	–01.	
Disk, LPT 5th Stage	ALL	72–53–51	–01.	
Disk, LPT 6th Stage	ALL	72–53–61	–01.	
Disk, LPT 7th Stage	ALL	72–53–71	–01.	

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual to either part number level listed in the table above, and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the TLS and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD by using a TLS of the manufacturer's engine manual changed as specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), by modifying your continuous airworthiness maintenance plan to reflect those changes. You must maintain records of the mandatory inspections that result from those changes to the TLS according to the regulations governing your operation. You do not need to record each piece-part inspection as compliance to this AD. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the TLS as specified in paragraph (f) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on August 24, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–17318 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–43–AD; Amendment 39–14242; AD 2005–18–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–209, –217, –217A, –217C, and –219 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 turbofan engines. That AD currently requires revisions to the engine manufacturer's time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part opportunity. This AD requires modifying the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective February 28, 2006.

ADDRESSES: You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to PW JT8D–209, –217, –217A, –217C, and –219 turbofan engines. We published the proposed AD in the **Federal Register** on August 18, 2004 (69 FR 51196). That action proposed to require modifying the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Increase the Costs of Compliance

Two commenters ask us to reconsider the necessary equipment and cost to do the automated eddy current inspections and to revise the Costs of Compliance to include the necessary tooling. The commenters suggest the notice of proposed rulemaking (NPRM) fails to recognize the large investment to get the equipment needed for the eddy current inspection. We don't agree. The AD doesn't require air carriers to invest in tooling and equipment or hire more personnel to comply with the proposed AD. The AD requires adding the new eddy current inspection to the TLS of the engine manufacturer's manual, and to the air carriers' approved maintenance manuals. Operators can choose to buy equipment to perform the inspection, or they may send the disk to an approved service provider.

Request for an Annual Cost for the Recurring Inspections

One commenter states the NPRM implies a onetime cost for the inspection, but that it is a recurring cost. We don't agree. The Costs of Compliance section of the NPRM states the estimated cost for each inspection on each engine. We used the current shop visit rate for the JT8D engine to calculate the yearly recurring cost for each engine. The air carriers can use their own specific costs for their individual JT8D fleet to calculate their inspection cost.

Question About the Cost for the Inspection

One commenter states the costs for the inspections are significantly different from the costs we specified in the NPRM. We don't agree. We based

our cost estimate on inspection times provided by the engine manufacturer. We understand that cost estimates can vary depending on the service provider. However, we consider basing our cost estimate on inspection times provided by the engine manufacturer to be the most accurate approach to estimating the cost to comply with the AD.

Concern About Increased Inventory Levels for Parts Not Reflected in the Cost Estimate

The same commenter suggests that quoted turnaround time for the inspection will make air carriers increase inventory levels for the affected parts. The commenter also suggests the cost estimate doesn't reflect the cost of the increased inventory. We don't agree. The AD requires adding the new eddy current inspection to the TLS of the engine manufacturer's manual, and to the air carrier's approved maintenance manuals. The AD doesn't require air carriers to increase spare parts inventory levels or specify the logistics of performing the inspections.

Requests To Allow Operators To Use Equivalent Equipment To Perform the Inspections

Three commenters ask that we allow them to use equipment that equals the inspection equipment specified by the engine manufacturer. The commenters ask us to allow them to use equipment they already use for other mandated inspections. The commenters suggest that using the single-source equipment specified by the manufacturer will cause an undue burden. We don't agree. We don't intend that this proposed AD specify only one method, or limit the inspection to one method of inspection. This AD requires the operators to revise the TLS to include a mandatory opportunistic inspection. The engine manufacturer developed a validated inspection procedure using specific tooling and equipment that provides an acceptable inspection technique. However, operators may still seek approval from the manufacturer to use alternative tools or methods of inspections other than those specified in the engine manual. Providing flexibility for the engine manufacturers to revise their engine manuals as they fine-tuned their inspection methods and developed alternatives is part of the outcome of working with the Air Transportation Association, operators, and manufacturers.

Question About the Completeness of Paragraph (i) of the Proposed AD

One commenter states the last sentence in paragraph (i), under ''Maintaining Records of the Mandatory Inspections'' does not seem complete. The commenter states the current sentence reads: ''For air carriers operating under part 121, you may use either the system established to comply with the compliance times unless specified unless the actions have already been done.'' We don't agree the sentence is incomplete. The sentence reads ''For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system''.

Request To Extend the Compliance Time of the Final Rule

Two commenters ask that we extend the effective date of the AD to allow an additional six to eight months. The commenters suggest the extension is necessary to procure the eddy current inspection equipment, train personnel, and to allow PW to revise their engine manuals to define clearly the approval procedure for alternate equipment. We agree. We changed the effective date from 30 days after publication in the **Federal Register** to 180 days after publication in the **Federal Register**.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 2,345 Pratt & Whitney JT8D–209, –217, –217A, –217C, and –219 turbofan engines of the affected design in the worldwide fleet. We estimate that this AD will affect 1,143 engines installed on airplanes of U.S. registry. We also estimate that it will take about 8 work hours per engine to perform the proposed inspections, and that the average labor rate is $65 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part costs are involved. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $594,360.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 98–ANE–43–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12797 (67 FR 44527, July 3, 2002) and by adding a new airworthiness directive, Amendment 39–14242, to read as follows:

2005–18–02 Pratt & Whitney: Amendment 39–14242. Docket No. 98–ANE–43–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 28, 2006.

Affected ADs

(b) This AD supersedes AD 2002–13–09.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 turbofan engines. These engines are installed on, but not limited to Boeing 727 and McDonnell Douglas MD–80 series airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of JT8D–209, –217, –217A, –217C, and ''219 turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Within the next 30 days after the effective date of this AD, (1) revise the Time Limits section (TLS) of the manufacturer's Engine Manual, Part Number 773128, as appropriate for PW JT8D–209, –217, –217A, –217C, and –219 turbofan engines, and (2) for air carriers, revise the approved mandatory inspections section of the continuous airworthiness maintenance program, by adding the following:

''Critical Life Limited Part Inspection

A. Inspection Requirements:

(1) This section contains the definitions for individual engine piece-parts and the inspection procedures, which are necessary, when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection.

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Section	Inspection No.
Hub (Disk), 1st Stage Compressor:		
Hub Detail—All P/Ns	72–33–31	–02, –03, –04
Hub Assembly—All P/Ns	72–33–31	–02, –03, –04
Disk, 13th Stage Compressor—All P/Ns	72–36–47	–02
HP Turbine, First Stage:		
Rotor Assembly—All P/Ns	72–52–02	–04
Disk—All P/Ns	72–52–02	–03
Disk, 2nd Stage Turbine—All P/Ns	72–53–16	–02
Disk, 3rd Stage Turbine—All P/Ns	72–53–17	–02
Disk, 4th Stage Turbine—All P/Ns	72–53–18	–02

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the TLS and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD by using a TLS of the manufacturer's engine manual changed as specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), by modifying your continuous airworthiness maintenance plan to reflect those changes. You must maintain records of the mandatory inspections that result from those changes to the TLS according to the regulations governing your operation. You do not need to record each piece-part inspection as compliance to this AD. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the TLS as specified in paragraph (f) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Related Information

(k) None.

Issued in Burlington, Massachusetts, on August 24, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–17319 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21599; Directorate Identifier 2005–NM–036–AD; Amendment 39–14246; AD–2005–18–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Bombardier Model CL–600–2B19 series airplanes. That AD currently requires revising the airplane flight manual (AFM) to provide the flightcrew with operating limitations and procedures to enable them to maintain controllability of the airplane in the event that aileron control stiffness is encountered during flight. This new AD requires revising the Airworthiness

Limitations section of the Instructions of Continued Airworthiness to incorporate certain repetitive tasks for the aileron control system and requires a briefing to advise flightcrews that certain aileron control checks are no longer required. After accomplishing the applicable initial tasks, the existing AFM revisions for the aileron control check may be removed from the AFM. This AD results from the development of terminating actions for the AFM revisions. We are issuing this AD to prevent aileron control stiffness during flight, which could result in reduced or possible loss of controllability of the airplane.

DATES: This AD becomes effective October 6, 2005.

The Director of the Federal Register approved the incorporation by reference of Canadair Regional Jet Temporary Revision 2B–2068, dated December 13, 2004, listed in the AD as of October 6, 2005.

The Director of the Federal Register approved the incorporation by reference of Canadair Regional Jet TR RJ/109–2, dated August 9, 2002, as of October 10, 2002 (67 FR 60117, September 25, 2002).

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dan Parillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, suite 410, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2002–19–07, amendment 39–12887 (67 FR 60117, September 25, 2002). The existing AD applies to all Bombardier Model CL–600–2B19 series airplanes. That NPRM was published in the **Federal Register** on June 22, 2005 (70 FR 36067). That NPRM proposed to retain the requirements of the existing AD (*i.e.*, airplane flight manual (AFM) revisions). That NPRM also proposed to require revising the Airworthiness Limitations section of the Instructions of Continued Airworthiness to incorporate certain repetitive tasks for the aileron control system and briefing flightcrews that certain aileron control checks are no longer required. After accomplishing the applicable initial tasks, the existing AFM revisions for the aileron control check may be removed from the AFM.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revisions (required by AD 2002–19–07)	1	$65	None	$65	727	$47,255
Airworthiness Limitation revision (new action)	1	$65	None	$65	727	$47,255

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12887 (67 FR 60117, September 25, 2002) and by adding the following new airworthiness directive (AD):

2005–18–06 Bombardier, Inc. (Formerly Canadair): Amendment 39–14246. Docket No. FAA–2005–21599; Directorate Identifier 2005–NM–036–AD.

Effective Date

(a) This AD becomes effective October 6, 2005.

Affected ADs

(b) This AD supersedes AD 2002–19–07.

Applicability

(c) This AD applies to all Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD was prompted by the development of terminating actions for the airplane flight manual (AFM) revisions. We are issuing this AD to prevent aileron control stiffness during flight, which could result in the reduction or possible loss of controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Requirements of AD 2002–19–07

AFM Revisions

(f) Within 14 days after October 10, 2002 (the effective date of AD 2002–19–07), insert the procedures for aileron system jams specified in Canadair Regional Jet Temporary Revision (TR) RJ/109–2, dated August 9, 2002, into the Emergency Procedures and Abnormal Procedures Sections, as applicable, of the FAA-approved Canadair Regional Jet AFM.

(g) Upon the accumulation of 5,000 total flight hours, or within 14 days after October 10, 2002, whichever occurs later, insert the procedures for the aileron control check specified in Canadair Regional Jet TR RJ/109–2, dated August 9, 2002, into the Limitations and Normal Procedures Sections, as applicable, of the Canadair Regional Jet AFM.

Note 2: The Limitations and Normal Procedures specified by paragraph (g) of this AD are required to be implemented only when an airplane has accumulated 5,000 total flight hours. However, individual pilots may operate other airplanes that have not yet accumulated 5,000 total flight hours, and that are not subject to those limitations and procedures. Therefore, to avoid any confusion or misunderstanding, it is important that airlines have communication mechanisms in place to ensure that pilots are aware, for each flight, whether the Limitations and Normal Procedures apply.

(h) When the information in Canadair Regional Jet TR RJ/109–2, dated August 9, 2002, of the Canadair Regional Jet AFM, has been incorporated into the FAA-approved general revisions of the AFM, the TR may be removed from the AFM.

New Actions Required by This AD

Revision of Airworthiness Limitations (AWL) Section

(i) Within 60 days after the effective date of this AD, revise the AWL section of the Instructions of Continued Airworthiness by incorporating the tasks specified in Table 1 of this AD and the corresponding ''Task Threshold/Interval'' of Canadair Regional Jet TR 2B–2068, dated December 13, 2004, into Appendix B—Airworthiness Limitations of Part 2 of Canadair Regional Jet Model CL–600–2B19 Maintenance Requirements Manual. Thereafter, except as provided in paragraph (m) of this AD, no alternative lubrication/replacement intervals may be approved for the aileron control system. After accomplishing the applicable initial tasks, the AFM revisions for the aileron control check required by paragraph (g) of this AD and allowed by paragraph (h) of this AD may be removed from the AFM.

TABLE 1.—AFFECTED TASK NUMBERS

Task No.	Description
(1) R22–11–A083–01	Lubrication of aileron autopilot servo and servo mount engage clutch faces.
(2) R27–00–A053–01	Replacement of aileron control pulleys with new or serviceable parts.
(3) R27–11–A082–01	Lubrication of the aileron control cables at the wing pulley interfaces.
(4) R27–11–A082–02	Lubrication of the aileron rear quadrant and trim lever bearings.

(j) For airplanes that have exceeded the task threshold for the new tasks specified in paragraph (i) of this AD as of the effective date of this AD: Do the initial tasks at the applicable ''Phase-In'' time specified in Canadiar Regional Jet TR 2B–2068, dated December 13, 2004; except where the TR specifies accomplishing the task no later than the applicable compliance time ''from November 5, 2004,'' this AD requires accomplishing the task within the applicable compliance time ''after the effective date of this AD.''

(k) When the information in Canadair Regional Jet TR 2B–2068, dated December 13, 2004, is included in the general revisions of the maintenance requirements manual, this TR may be removed.

Flightcrew Briefing

(l) After accomplishing the applicable initial tasks required by paragraph (i) of this AD, brief flightcrews that there is no longer a requirement to perform aileron control checks following takeoff from a wet or contaminated runway.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(n) Canadian airworthiness directive CF–2002–35R2, issued January 6, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(o) You must use Canadair Regional Jet TR RJ/109–2, dated August 9, 2002; and Canadair Regional Jet Temporary Revision 2B–2068, dated December 13, 2004, to the Canadair Regional Jet Model CL–600–2B19 Maintenance Requirements Manual; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Canadair Regional Jet Temporary Revision 2B–2068, dated December 13, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register approved the incorporation by reference of Canadair Regional Jet TR RJ/109–2, dated

August 9, 2002, as of October 10, 2002 (67 FR 60117, September 25, 2002).

(3) Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–17333 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21595; Directorate Identifier 2002–NM–321–AD; Amendment 39–14245; AD 2005–18–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–1A10 (Water Bomber), CL–215–6B11 (CL215T Variant), and CL–215–6B11 (CL415 Variant) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes. That AD currently requires repetitive ultrasonic inspections to detect cracking of the lower caps of the wing front spar and rear spar, and corrective action if necessary. This new AD reduces the threshold to do the initial inspections and revises the repetitive inspection interval. This new AD also adds a repetitive ultrasonic inspection of the wing lower skin. This AD results from reports of cracks in the front and rear spar lower caps. We are issuing this AD to detect and correct cracking of the lower caps of the wing front spar and rear spar, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective October 6, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 6, 2005.

On March 4, 1998 (63 FR 7640, February 17, 1998), the Director of the Federal Register approved the incorporation by reference of Canadair Alert Service Bulletin 215–A454, Revision 1, dated May 25, 1995; and Canadair Alert Service Bulletin 215–A463, Revision 1, dated May 25, 1995.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: David Lawson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7327; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 98–04–08, amendment 39–10321 (63 FR 7640, February 17, 1998). The existing AD applies to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes. That NPRM was published in the **Federal Register** on June 22, 2005 (70 FR 36075). That NPRM proposed to continue to require repetitive ultrasonic inspections to detect cracking of the lower caps of the wing front spar and rear spar, and corrective action if necessary. That NPRM also proposed to require reducing the threshold in the existing AD for doing the initial inspections and revising the repetitive inspection interval, and to add a repetitive ultrasonic inspection of the wing lower skin.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Explanation of Change in Applicability

We have revised the applicability of the final rule to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 3 airplanes of U.S. registry.

The actions that are required by AD 98–04–08 and retained in this AD take about 16 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required actions is $1,040 per airplane, per inspection cycle.

The new inspections required by this AD will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the new inspections specified in this AD for U.S. operators is $195 per inspection cycle, or $65 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–10321 (63 FR 7640, February 17, 1998) and by adding the following new airworthiness directive (AD):

2005–18–05 Bombardier, Inc. (Formerly Canadair): Amendment 39–14245. Docket No. FAA–2005–21595; Directorate Identifier 2002–NM–321–AD.

Effective Date

(a) This AD becomes effective October 6, 2005.

Affected ADs

(b) This AD supersedes AD 98–04–08.

Applicability

(c) This AD applies to Bombardier Model CL–215–1A10 (Water Bomber), CL–215–6B11 (CL215T Variant), and CL–215–6B11 (CL415 Variant) airplanes; certificated in any category; serial numbers 1001 through 1125 inclusive.

Unsafe Condition

(d) This AD results from reports of cracks in the front and rear spar lower caps. We are issuing this AD to detect and correct cracking of the lower caps of the wing front spar and rear spar, which could result in reduced structural integrity of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Certain Requirements of AD 98–04–08

Initial Inspection of AD 98–04–08 With New Threshold

(f) At the time specified in paragraph (g) of this AD: Perform an ultrasonic inspection to detect cracking of the lower cap of the wing front and rear spars at wing station 51, in accordance with the Accomplishment Instructions of Canadair Alert Service Bulletin 215–A463, Revision 1, dated May 25, 1995, or Bombardier Alert Service Bulletin 215–A463, Revision 2, dated March 13, 2001 (for the front spar); and Canadair Alert Service Bulletin 215–A454, Revision 1, dated May 25, 1995, Bombardier Alert Service Bulletin 215–A454, Revision 2, dated January 27, 1999, or Bombardier Alert Service Bulletin 215–A454, Revision 3, dated March 13, 2001 (for the rear spar). As of the effective date of this AD, the inspection must be done in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A463, Revision 2, dated March 13, 2001 (for the front spar); and Bombardier Alert Service Bulletin 215–A454, Revision 3, dated March 13, 2001 (for the rear spar).

(g) Do the inspections required by paragraph (f) of this AD at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Prior to the accumulation of 3,000 total flight hours, or within 25 flight hours after March 4, 1998 (the effective date of AD 98–04–08), whichever occurs later.

(2) At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Prior to the accumulation of 2,500 total flight hours, or 8,000 total water drops, whichever occurs first.

(ii) Within 50 flight hours or 150 water drops after the effective date of this AD, whichever occurs first.

Repetitive Inspections With New Intervals

(h) Repeat the ultrasonic inspection specified in paragraph (f) of this AD at the times specified in paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For airplanes on which any ultrasonic inspection required by paragraph (a) of AD 98–04–08 has been done before the effective date of this AD: Within 600 flight hours after the last ultrasonic inspection, do the ultrasonic inspection specified in paragraph (f) of this AD. Repeat the ultrasonic inspection specified in paragraph (f) of this AD thereafter at intervals not to exceed 600 flight hours or 2,000 water drops, whichever occurs first.

(2) For airplanes on which the ultrasonic inspection required by paragraph (a) of AD 98–04–08 has not been done before the effective date of this AD: After accomplishing the initial ultrasonic inspection specified in paragraph (f) of this AD, repeat the ultrasonic inspection specified in paragraph (f) of this AD thereafter at intervals not to exceed 600 flight hours or 2,000 water drops, whichever occurs first.

New Requirements of This AD

New Ultrasonic Inspection

(i) At the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD, do an ultrasonic inspection for cracks of the wing lower skin, in accordance with Bombardier Alert Service Bulletin 215–A454, Revision 3, dated March 13, 2001. Thereafter, do the ultrasonic inspection for cracks of the wing lower skin at the times specified for the ultrasonic inspection in paragraph (h) of this AD.

(1) Within 50 flight hours or 150 water drops after the effective date of this AD, whichever occurs first.

(2) Before further flight after accomplishing the first ultrasonic inspection required by paragraph (f) or (h) of this AD after the effective date of this AD.

Cracking Detected

(j) If any cracking is detected during any inspection required by paragraph (f), (h), or (i) of this AD, before further flight, accomplish paragraphs (j)(1) and (j)(2) of this AD.

(1) Rework the lower cap of the front or rear spar, as applicable, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A463, Revision 2, dated March 13, 2001 (for the front spar); and Bombardier Alert Service Bulletin 215–A454, Revision 3, dated March 13, 2001 (for the rear spar).

(2) After doing the rework specified in paragraph (j)(1) of this AD, do a general visual inspection, from inside the wing box, to detect cracks of the front spar web or rear spar web, as applicable, and the lower skin area, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A463, Revision 2, dated March 13, 2001 (for the front spar); and Bombardier Alert Service Bulletin 215–A454, Revision 3, dated March 13, 2001 (for the rear spar). If any cracking is detected, before further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of

inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Actions Accomplished According to Previous Issues of the Service Bulletins

(k) Actions accomplished before the effective date of this AD in accordance with Canadair Alert Service Bulletin 215–A463, dated April 8, 1993; Canadair Alert Service Bulletin 215–A463, Revision 1, dated May 25, 1995; Canadair Alert Service Bulletin 215–A454, dated October 13, 1993; Canadair Alert Service Bulletin 215–A454, Revision 1, dated May 25, 1995; and Bombardier Alert Service Bulletin 215–A454, Revision 2, dated January 27, 1999; are considered acceptable for compliance with the corresponding actions specified in this AD.

Actions Accomplished According to Alert Wire

(l) Actions accomplished before the effective date of this AD in accordance with Bombardier Alert Wire 215–A454, dated December 23, 1992; and Bombardier Alert Wire 215–A463, dated March 26, 1993; are considered acceptable for compliance with the corresponding actions specified in this AD.

Reporting Requirement

(m) For any inspection required by this AD that is accomplished after the effective date of this AD, within 30 days after accomplishing the inspection, submit a report of any inspection results (both positive and negative findings) to Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD, and assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance (AMOCs)

(n) The Manager, New York ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(o) Canadian airworthiness directives CF–1992–26R1, dated September 24, 2002, and CF–1993–07R1, dated September 25, 2002, also address the subject of this AD.

Material Incorporated by Reference

(p) You must use the service information listed in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Bombardier Alert Service Bulletin 215–A454	2	January 27, 1999.
Bombardier Alert Service Bulletin 215–A454	3	March 13, 2001.
Bombardier Alert Service Bulletin 215–A463	2	March 13, 2001.
Canadair Alert Service Bulletin 215–A454	1	May 25, 1995.
Canadair Alert Service Bulletin 215–A463	1	May 25, 1995.

(1) The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2.—MATERIAL NEWLY INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Bombardier Alert Service Bulletin 215–A454	2	January 27, 1999.
Bombardier Alert Service Bulletin 215–A454	3	March 13, 2001.
Bombardier Alert Service Bulletin 215–A463	2	March 13, 2001.

(2) The Director of the Federal Register approved the incorporation by reference of the service information listed in Table 3 of this AD on March 4, 1998 (63 FR 7640, February 17, 1998).

TABLE 3.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Canadair Alert Service Bulletin 215–A454	1	May 25, 1995.
Canadair Alert Service Bulletin 215–A463	1	May 25, 1995.

(3) Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–17323 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29334; Amendment No. 71–37]

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9N, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points incorporated by reference.

DATES: These regulations are effective September 16, 2005, through September 15, 2006. The incorporation by reference of FAA Order 7400.9N is approved by the Director of the Federal Register as of September 16, 2005, through September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Tameka Bentley, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, listed Class A, B, C, D and E airspace areas; air traffic service routes; and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Regulations section 71.1, effective September 16, 2004, through September 15, 2005. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9M in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Order 7400.9N, Airspace Designations and Reporting Points. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9N in § 71.1, as of September 16, 2005, through September 15, 2006. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.15, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9N.

The Rule

This action amends 14 CFR part 71 to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9N, effective September 16, 2005, through September 15, 2006. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9N in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in § 71.1.

The FAA has determined that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts, and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9N is effective September 16, 2005, through September 15, 2006. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9N may be obtained from the Law Library of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3174. Copies of FAA Order 7400.9N may be inspected in Docket No. 29334, at the same address above, weekdays between 8 a.m. and 4:30 p.m., or on the **Federal Register** Web site at *http://www.regulations.gov.* This section is effective September 16, 2005, through September 15, 2006.

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words ''FAA Order 7400.9M'' and adding, in their place, the words ''FAA Order 7400.9N.''

§ 71.15 [Amended]

■ 4. Section 71.15 is amended by removing the words ''FAA Order 7400.9'' and adding, in their place, the words ''FAA Order 7400.9N.''

§ 71.31 [Amended]

■ 5. Section 71.31 is amended by removing the words ''FAA Order 7400.9M'' and adding, in their place, the words ''FAA Order 7400.9N.''

§ 71.33 [Amended]

■ 6. Paragraph (c) of § 71.33 is amended by removing the words ''FAA Order 7400.9M'' and adding, in their place, the words ''FAA Order 7400.9N.''

§ 71.41 [Amended]

■ 7. Section 71.41 is amended by removing the words ''FAA Order 7400.9M'' and adding, in their place, the words ''FAA Order 7400.9N.''

§ 71.51 [Amended]

■ 8. Section 71.51 is amended by removing the words ''FAA Order 7400.9M'' and adding, in their place, the words ''FAA Order 7400.9N.''

§ 71.61 [Amended]

■ 9. Section 71.61 is amended by removing the words ''FAA Order 7400.9M'' and adding, in their place, the words ''FAA Order 7400.9N.''

§ 71.71 [Amended]

■ 10. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words ''FAA Order 7400.9M'' and adding, in their place, the words ''FAA Order 7400.9N.''

§ 71.901 [Amended]

■ 11. Paragraph (a) of § 71.901 is amended by removing the words ''FAA Order 7400.9M'' and adding, in their place, the words ''FAA Order 7400.9N.''

Issued in Washington, DC, on August 12, 2005.

Sheri Edgett Baron,

Acting Manager, Airspace and Rules.

[FR Doc. 05–16326 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30453; Amdt. No. 456]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction.

SUMMARY: This action corrects errors in certain amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed listed in a final rule published in the **Federal Register** on August 2, 2005 (70 FR 44278).

EFFECTIVE DATE: 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION:

History

On August 2, 2005 final rule was published in the **Federal Register** (70 FR 44278). This rule amended part 95 of the Federal Aviation Regulations (14 CFR part 95) by amending, suspending, or revoking IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. In these amendments, the FAA inadverdantly listed seven High Altitude RNAV Q Routes with GNSS MEAs only, failing to include DME/DME IRU RNAV MEAs. This action corrects that error.

Correction to Final Rule

■ Accordingly, and pursuant to the authority delegated to me, the legal descriptions for 94.4104 (Q104), 95.4106 (Q106), 95–4108 (Q108), 95.4110 (Q110), 95.4112 (Q–112), 95.4116 (Q–116), and 95.4118 (Q118) as published in the **Federal Register** on August 2, 2005 (70 FR 44278) and incorporated by reference in part 95 are corrected as follows:

PART 95—[CORRECTED]

CORRECTION TO REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 456 Effective Date September 01, 2005]

From	To	MEA	MAA
§ 95.4000 High Altitude RNAV Routes			
§ 95.4104 RNAV Route Q104 Is Added to Read			
Cypress, FL VOR/DME *18000—GNSS MEA. #18000—DME/DME IRU RNAV MEA.	Defun, FL FIX	#*18000	45000
§ 95.4106 RNAV Route Q106 Is Added to Read			
Smelz, FL FIX *18000—GNSS MEA. #18000—DME/DME IRU RNAV MEA.	Gaday, AL FIX	#*18000	45000
§ 95.4108 RNAV Route Q108 Is Added to Read			
Gaday, AL FIX *18000—GNSS MEA. #18000—DME/DME IRU RNAV MEA.	Clawz, GA FIX	#*18000	45000
§ 95.4110 RNAV Route Q110 Is Added to Read			
Kpasa, FL FIX	Feona, GA FIX	#*18000	45000

CORRECTION TO REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 456 Effective Date September 01, 2005]

From	To	MEA	MAA
*18000—GNSS MEA. #18000—DME/DME IRU RNAV MEA.			
§ 95.4112 RNAV Route Q112 Is Added to Read			
Inpin, FL FIX *18000—GNSS MEA. #18000—DME/DME IRU RNAV MEA.	Defun, FL FIX	#*18000	45000
§ 95.4116 RNAV Route Q116 Is Added to Read			
Kpasa, FL FIX *18000—GNSS MEA. #18000—DME/DME IRU RNAV MEA.	Ceeya, GA FIX	#*18000	45000
§ 95.4118 RNAV Route Q118 Is Added to Read			
Kpasa, FL FIX *18000—GNSS MEA. #18000—DME/DME IRU RNAV MEA.	Lenie, GA FIX	#*18000	45000

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 05–17476 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–52355; File No. S7–10–04]

Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Commission is extending the compliance date for the amendment to Rule 301(b)(5) of Regulation ATS under the Securities Exchange Act of 1934 that was adopted in connection with Regulation NMS.

DATES: The effective date for amended Rule 301(b)(5) remains August 29, 2005. The compliance date for amended Rule 301(b)(5) is extended from August 29, 2005 to September 28, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Gaw, (202) 551–5602, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On June 29, 2005, the Securities and Exchange Commission (''Commission'') published in the **Federal Register** its release adopting Regulation NMS [1] under the Securities Exchange Act of 1934 (''Exchange Act''). In connection with the adoption of Regulation NMS, the Commission amended Rule 301(b)(5) of Regulation ATS [2] under the Exchange Act (''Fair Access Rule''). The Fair Access Rule provides, among other things, that, if an alternative trading system accounts for a certain percentage of the average daily volume in a security over four of the preceding six months, it: (1) Must establish written standards for granting access to trading on its system, and (2) must not unreasonably prohibit or limit any person in respect to access to services offered by such system by applying these written standards in an unfair or discriminatory manner.[3] In adopting Regulation NMS, the Commission amended the Fair Access Rule to lower the fair access threshold from 20% of the average daily volume in a security to 5%. The Regulation NMS Adopting Release established an effective date and a compliance date of August 29, 2005 for the amended Fair Access Rule.

A number of questions have been raised during the implementation period regarding the application of the amended Fair Access Rule to different business models. The Commission and its staff are continuing to consider these issues as well as requests for exemptive relief. Delaying the compliance date for thirty days will permit the Commission and its staff additional time to respond to the questions and exemptive requests.

For the reasons cited above and given the impending August 29, 2005 compliance date, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance date for the amended Fair Access Rule is impracticable, unnecessary, or contrary to the public interest.[4] The Commission notes that the compliance date is a few days away, and that a limited extension of the compliance date will provide the Commission and its staff with needed time to resolve implementation issues with respect to various market participants.

Further, the Commission notes that, in light of these time constraints, full notice and comment could not be completed prior to the August 29, 2005 compliance date. The change to the compliance date for amended Rule 301(b)(5) is effective immediately. This date is less than 30 days after publication in the **Federal Register**, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.''[5]

By the Commission.

[1] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[2] *See* 17 CFR 242.300 *et seq.* Regulation ATS governs the activities of alternative trading systems.

[3] *See* 17 CFR 242.301(b)(5).

[4] *See* Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impracticable, unnecessary, or contrary to the public interest'').

[5] 5 U.S.C. 553(d)(1).

Dated: August 29, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–17531 Filed 8–30–05; 1:53 pm]

BILLING CODE 8010–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AM20

Jurisdictions and Addresses of Regional Counsels

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations regarding the jurisdictions and addresses of the General Counsel's Regional Counsels. This amendment is necessary to update Title 38, Code of Federal Regulations, to reflect recent jurisdiction and address changes.

DATES: *Effective Date:* September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Sokoll, Deputy Director, Legal Information Division, Office of General Counsel (026H), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA's regulation 38 CFR 14.501, ''Functions and responsibilities of Regional Counsels,'' has the jurisdictions and addresses of Regional Counsels in paragraph (f). This amendment removes obsolete information in that paragraph, regarding the jurisdictions and addresses of Regional Counsels and replaces it with current information. The rule provides updated addresses for several Regional Counsels. Additionally, it reflects a reorganization of the jurisdictions of some Regional Counsels. The 23 regions previously referenced in § 14.501(f) have been consolidated into 22 regions. Accordingly, this rule removes reference to former Region 17 and reflects the revised jurisdictions of Regions 18 and 19 as a result of that reorganization.

Administrative Procedure Act

These changes to 38 CFR 14.501(f) are being published without regard to notice-and-comment procedures of 5 U.S.C. 553(b) because they involve only matters of agency organization, which are exempted from such procedures by virtue of 5 U.S.C. 553(b)(3)(A). Further, because these changes do not involve substantive rules, they are not subject to the provisions of 5 U.S.C. 553(d) providing for a 30-day delay in the effective date of substantive rules.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This regulation deals with the internal organization of the VA Regional Counsels and primarily impacts VA and beneficiaries. To the extent that any small entities deal with VA Regional Counsels, this rule merely provides information to assist such entities in identifying and locating the proper Regional Counsel and thus will not have any significant economic impact upon a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance program number associated with this rulemaking.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Approved: August 11, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 14 is amended as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

■ 1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 2. Section 14.501(f) is revised to read as follows:

§ 14.501 Functions and responsibilities of Regional Counsels.

* * * * *

(f) The jurisdictions and addresses of Regional Counsels are as follows:

(1) *Region 1:* (JURISDICTION) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island; (ADDRESS) VAMC, 200 Springs Road, Bldg. 61, Bedford, MA 01730.

(2) *Region 2:* (JURISDICTION) New Jersey, Metropolitan New York City; (ADDRESS) 800 Poly Place, Building 14, Brooklyn, NY 11209.

(3) *Region 3:* (JURISDICTION) District of Columbia; Fairfax, Virginia; Arlington, Virginia; Alexandria, Virginia; Martinsburg, West Virginia; and Maryland; (ADDRESS) 3900 Loch Raven Blvd., Bldg. 4, Baltimore, MD 21218.

(4) *Region 4:* (JURISDICTION) Pennsylvania, Delaware; (ADDRESS) University & Woodland Avenues, Philadelphia, PA 19104.

(5) *Region 5:* (JURISDICTION) Georgia, South Carolina; (ADDRESS) 1700 Clairmont Rd., Decatur, GA 30033–4032.

(6) *Region 6:* (JURISDICTION) Florida, Puerto Rico; (ADDRESS) P.O. Box 5005, Building 22, Room 333, Bay Pines, FL 33744.

(7) *Region 7:* (JURISDICTION) Ohio, West Virginia (excluding Martinsburg, West Virginia); (ADDRESS) 10000 Brecksville Rd., Bldg. 1, 5th Floor, Brecksville, OH 44141.

(8) *Region 8:* (JURISDICTION) Arkansas, Tennessee; (ADDRESS) 110 9th Ave., South Room A–201A, Nashville, TN 37203.

(9) *Region 9:* (JURISDICTION) Alabama, Mississippi; (ADDRESS) 1500 E. Woodrow Wilson Dr., Jackson, MS 39216.

(10) *Region 10:* (JURISDICTION) Illinois, Iowa; (ADDRESS) VA Medical Center, Bldg. 1, G Section 1st Floor, P. O. Box 1427, Hines, IL 60141.

(11) *Region 11:* (JURISDICTION) Michigan, Wisconsin; (ADDRESS) Patrick V. McNamara Federal Bldg., Suite 1460, 477 Michigan Ave., Detroit, MI 48226.

(12) *Region 12:* (JURISDICTION) Kansas, Missouri, Nebraska; (ADDRESS) 1 Jefferson Barracks Drive, St. Louis, MO 63125–4185.

(13) *Region 13:* (JURISDICTION) Oklahoma, Northern Texas; (ADDRESS) 4800 Memorial Drive, Bldg. 12, Waco, TX 76711.

(14) *Region 14:* (JURISDICTION) Louisiana, Southern Texas; (ADDRESS) 6900 Almeda Road, Houston, TX 77030.

(15) *Region 15:* (JURISDICTION) Minnesota, North Dakota, South Dakota; (ADDRESS) VA Medical Center, One Veterans Drive, Bldg. 73, Minneapolis, MN 55417.

(16) *Region 16:* (JURISDICTION) Colorado, Wyoming, Utah, Montana; (ADDRESS) Box 25126, 155 Van Gordon Street, Denver, CO 80225.

(17) *Region 18:* (JURISDICTION) California, Hawaii, and Philippine Islands; (ADDRESS) VA Medical Center, 4150 Clement Street, Bldg. 210, San Francisco, CA 94121.

(18) *Region 19:* (JURISDICTION) Arizona, Nevada, and New Mexico; (ADDRESS) 650 E. Indian School Rd., Bldg. 24, Phoenix AZ 85012.

(19) *Region 20:* (JURISDICTION) Idaho, Oregon, Washington, Alaska; (ADDRESS) 1220 S.W. Third Ave., Suite 1224, Portland, OR 97204.

(20) *Region 21:* (JURISDICTION) New York (except Metropolitan New York City), Vermont; (ADDRESS) 120 LeBrun, Buffalo, NY 14215.

(21) *Region 22:* (JURISDICTION) Indiana, Kentucky; (ADDRESS) 575 N. Pennsylvania Street, Room 309, Indianapolis, IN 46204.

(22) *Region 23:* (JURISDICTION) North Carolina, Virginia (excluding Fairfax, Arlington, and Alexandria); (ADDRESS) Hiram H. Ward Federal Bldg., 251 N. Main Street, Winston-Salem, NC 27155.

[FR Doc. 05–17416 Filed 8–31–05; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 265

Release of Information, Privacy of Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the Postal Service™ regulations on the release of information and privacy of information.

DATES: This rule is effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Jane Eyre at (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Postal Service is revising the format required for requests from process servers for change of address or boxholder information, and the format required for requests from government agencies for address information.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information.

■ For the reasons set forth in this document, the Postal Service is amending 39 CFR part 265 as follows:

PART 265—RELEASE OF INFORMATION

■ 1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

§ 265.6 [Amended]

■ 2. In § 265.6, following paragraph (g), the two figures are revised to read as follows:

BILLING CODE 7710–12–M

Change of Address or Boxholder Request Format — Process Servers

Postmaster Date_____

_____
City, State, ZIP Code

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and address (if a boxholder) for the following:

Name:_____

Address:_____

Note: Only one request may be made per completed form. The name and last known address are required for change of address information. The name, if known, and Post Office box address are required for boxholder information.

The following information is provided in accordance with 39 CFR 265.6(d)(5)(ii). There is no fee for providing boxholder or change of address information.

1. Capacity of requester (e.g., process server, attorney, party representing self):_____

2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting pro se — except a corporation acting pro se must cite statute):

_____

_____

3. The names of all known parties to the litigation:_____

4. The court in which the case has been or will be heard:_____

5. Docket or other identifying number (a or b must be completed):

☐ a. Docket or other identifying number: _____

☐ b. Docket or other identifying number has not been issued.

6. The capacity in which this individual is to be served (e.g., defendant or witness):_____

WARNING: THE SUBMISSION OF FALSE INFORMATION TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO $10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.

_____ _____
Signature Address

_____ _____
Printed Name City, State, ZIP Code

POST OFFICE USE ONLY

☐ No change of address on file

☐ Moved, left no forwarding address

☐ No such address

NEW ADDRESS OR BOXHOLDER NAME POSTMARK AND STREET ADDRESS:

_____
_____
_____

Address Information Request Format - Government Agencies

(AGENCY LETTERHEAD)

TO: Postmaster

_____

Agency Control Number _____

Date_____

ADDRESS INFORMATION REQUEST

Please furnish this agency with the new address, if available, for the following individuals or verify whether or not the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the address as recorded on the boxholder's application form.

Name: _____

Last Known Address:_____

I certify that the address information for this individual is required for the performance of this agency's official duties.

_____

(Signature of Agency Official)

_____

(Title)

FOR POST OFFICE USE ONLY

☐ MAIL IS DELIVERED TO ADDRESS GIVEN	NEW ADDRESS
☐ NOT KNOW AT ADRESS GIVEN	_____
☐ MOVED, LEFT NO FORWARDING ADDRESS	_____
☐ NO SUCH ADDRESS	
☐ OTHER (SPECIFY)	BOXHOLDER STREET ADDRESS
_____	_____
_____	_____
Agency return address	Postmark/Date Stamp

Neva Watson,
Attorney, Legislative.
[FR Doc. 05–17378 Filed 8–31–05; 8:45 am]
BILLING CODE 7710–12–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7964–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of direct final deletion of the Jones Sanitation Superfund Site from the National Priorities List.

SUMMARY: On July 7, 2005, the Environmental Protection Agency (EPA), Region 2, published a direct final deletion (70 FR 129) to delete the Jones Sanitation Superfund Site (Site), located in Hyde Park, New York, from the National Priorities List (NPL). The EPA is withdrawing this final action due to adverse comments received during the public comment period. After consideration of the comments received, if appropriate, EPA will publish a notice of deletion in the **Federal Register** based on the parallel notice of proposed deletion (70 FR 129) dated July 7, 2005 and place a copy of the final deletion

package, including a Responsiveness Summary in the Site repositories.

DATES: The direct final action published on July 7, 2005, at 70 FR 129, is withdrawn as of September 1, 2005.

ADDRESSES: Comprehensive information on the Site, as well as the comments that were received during the comment period are available through the public docket contained at: U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4308. Hours: 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Isabel Rodrigues, Remedial Project Manager, U.S. EPA Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4248; Fax Number (212) 637–4284; E-mail address: *Rodrigues.Isabel@EPA.GOV.*

SUPPLEMENTARY INFORMATION: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308. Hours: 9 a.m. to 5 p.m., Monday through Friday; by appointment

and,

Hyde Park Free Public Library, 2 Main Street, Hyde Park, NY 12538. Hours: 9 a.m. to 8 p.m., Monday and Tuesday; 12 to 8 p.m., Wednesday and Thursday; 9 a.m. to 2 p.m., Saturday.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 19, 2005.

Dore Laposta,

Acting Regional Administrator, Region II.

[FR Doc. 05–17435 Filed 8–31–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

[CMS–4063–F]

RIN 0938–AN97

Medicare Program; Medicare Prescription Drug Discount Card; Revision of Marketing Rules for Endorsed Drug Card Sponsors

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule will revise the current limitations prohibiting an endorsed drug card sponsor from marketing its Part D plans to its drug card enrollees. This revised rule will give the current drug card sponsors the ability to market to their enrollees Part D plans that are either offered by the same endorsed drug card sponsor or an affiliated organization of the same endorsed drug card sponsor. We are making these changes after considering the public comments received regarding the need to ensure a smooth transition from the drug card to the Medicare Prescription Drug Benefit.

DATES: *Effective Date:* These regulations are effective on October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Jennifer Shapiro, (410) 786–7407.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Electronic Copies: An electronic copy of this document may be downloaded using a modem and suitable communications software. Internet users may reach CMS's Web page at

- *http://www.cms.hhs.gov/regulations*;
- *http://www.regulations.gov;* or
- *http://www.gpoaccess.gpo/nara/index.html.*

Order Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10.

Photocopies: As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

I. Background

The Medicare drug discount card program was established by section 101, subpart 4, of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and is codified in section 1860D–31 of the Social Security Act (the ''Act''). On December 15, 2003, in accordance with section 105(c)(1)(C) of the Act, we published the interim final rule with comment period (hereafter referred to as ''interim final rule'') for the Medicare drug discount card program on December 15, 2003 (68 FR 69840).

The interim final rule at § 403.813(a) addresses marketing limitations applicable to endorsed discount card sponsors in accordance with section 1860D–31(h)(7)(B) of the Act. Under these marketing limitations, an endorsed sponsor may only market those products and services offered under its endorsed program that are inside the scope of endorsement and permitted under the HIPAA Privacy Rule.

After considering the public comments on these issues we agree with the commenters that this policy does not comply with the intent of the Medicare Modernization Act which directs the Secretary to facilitate efficient enrollment into Part D plans. This final rule allows an endorsed card sponsor to market information to its Medicare drug card enrollees concerning its Part D plans offered by the endorsed card sponsor or an affiliated organization. This change will increase Medicare beneficiaries' awareness and knowledge of Part D plans, thereby facilitating a smooth transition from the Medicare Prescription Drug Discount Card Program to the Medicare Prescription Drug Benefit.

Requirements for Issuance of Regulations

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and requires, in part, that the Secretary, in consultation with the Director of the Office of Management and Budget establish and publish timelines for the publication of Medicare final regulations based on the previous

publication of a Medicare proposed or interim final regulation. Section 902(a)(1) of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final regulation except under exceptional circumstances.

Therefore, we believe that the final rule is in accordance with the Congress's intent to ensure timely publication of final regulations.

II. Discussion of the Provisions of the Final Rule

A. Provision of the Interim Final Rule

Section 403.813(a)(1) of the December 15, 2003 interim final rule provides that an endorsed sponsor may only market those products and services offered under its endorsed program that are inside the scope of endorsement as defined in § 403.806(h) and permitted under § 403.812(b) (pertaining to the HIPAA privacy requirements). Section 403.806(h)(2) defines products and services inside the scope of the Medicare endorsement as products and services that are: (1) Directly related to covered discount card drugs or discounts for over-the-counter drugs; and (2) offered for no additional fee (other than the enrollment fee).

Section 403.813(a) of the interim final rule provides that an endorsed sponsor may not request that a drug card enrollee or an individual seeking to enroll in its endorsed discount card program authorize the endorsed sponsor to use or disclose individually identifiable health information for marketing other products or services not otherwise allowed under § 403.813(a)(1) (§ 403.813(a)(2)); that an endorsed sponsor may not commingle any materials related to the marketing of products or services allowed under § 403.813(a)(1) with other marketing materials (§ 403.813(a)(3)); and that following termination of an endorsed sponsor's endorsement under § 403.820(c), (d) or (e) or termination of the Medicare Drug Discount Card and Transitional Assistance Program, a drug card enrollee's individually identifiable health information collected or maintained by an endorsed sponsor may not be used or disclosed for purposes of marketing any product or service (§ 403.813(a)(4)).

These provisions on marketing limitations are based on section 1860D–31(h)(7)(B) of the Act, which states that an endorsed sponsor may market a product or service under the program only if the product or service is directly related to a covered discount card drug or a discount price for a non-prescription drug, and on section 1860D–31(h)(8) of the Act, which charges us with protecting and promoting the interests of discount card eligible individuals.

In addition to the specific requirements of the Act that the product or services be directly related to a covered discount card drug or a discount on a non-prescription drug, § 403.806(h)(2) of the interim final regulation further requires that products and services inside the scope of endorsement are limited to products or services offered for no additional charge because, as we stated in the preamble, we were concerned that beneficiaries would be unable to access negotiated prices and transitional assistance, as intended by the Congress, if endorsed sponsors required that they pay additional fees for optional products and services. Further, we believed that permitting endorsed sponsors to charge additional fees could be confusing to beneficiaries. Also, if we were to allow endorsed sponsors to charge additional fees, we believe beneficiaries might, in effect, be charged annual enrollment fees higher than the $30 limit mandated by section 1860D–31(c)(2)(B) of the Act, especially if endorsed sponsors were to condition enrollment in their endorsed programs on beneficiaries paying these additional fees.

III. Analysis of and Response to Public Comments

A. Overview of Comments

We received 49 public comments concerning the Medicare drug discount card program. Of these comments, 8 timely comments were received that addressed issues on marketing and information and outreach in two separate areas. A summary of the major issues and our responses are as follows:

Comment: Of the 8 comments related to marketing, 4 of the comments expressed the need to minimize the potential for beneficiary confusion and encouraged us to allow sponsors to provide enrollees with valuable health education and other information. One commenter encouraged us to ensure that the regulation reflect the intent of the conferees that there be a seamless transition between the drug card program and the Medicare Prescription Drug Benefit. The other commenters encouraged us to create guidelines concerning marketing materials and fairness in marketing. None of the comments were opposed to us issuing additional guidelines.

Response: We agree with the commenters' concerns regarding the need to minimize beneficiary confusion by allowing endorsed sponsors to distribute certain important and valuable information to beneficiaries, including information which will promote a smoother transition for drug card enrollees from the Medicare-approved prescription drug discount card program to the Medicare Prescription Drug Benefit. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 Conference Report clearly articulates this intent where the report discusses the history of the drug card program and its original purpose as an interim step toward prescription drug coverage for Medicare beneficiaries. Furthermore, a separate discussion appearing in the Conference Report addressing Part D emphasizes the need to facilitate outreach to beneficiaries to ensure participation in Medicare prescription drug coverage and to reduce barriers associated with marketing to minimize the potential for confusion and to facilitate enrollment into the Medicare Prescription Drug Benefit.

We agree with the commenter that encouraged us to ensure that the regulation reflect the intent of the conferees that there be a seamless transition between the drug card program and the Medicare Prescription Drug Benefit. As we move toward implementation of the Medicare Prescription Drug Benefit, it has become evident that certain aspects of the interim final rule are creating unintended consequences for Medicare beneficiaries and endorsed card sponsors. Specifically the marketing limitations at § 403.813(a) contradict Congressional intent for the Medicare prescription drug discount card program to serve as a transitional program to the Medicare Prescription Drug Benefit. As previously mentioned, the provisions in the interim final rule prevent an endorsed drug card sponsor from marketing its Part D plans to its drug card enrollees. Moreover, we agree that clarifications and modifications to the marketing limitation rules would reduce beneficiary confusion as the drug card program concludes and the Medicare Prescription Drug Benefit begins. Finally, it is crucial that Medicare beneficiaries have complete and accurate information on the forthcoming Medicare Prescription Drug Benefit. We agree with all comments that expressed an important aspect of ensuring that beneficiaries receive this information is by allowing a beneficiary's drug card sponsor, an entity with which the beneficiary is familiar and has an existing relationship to provide educational and related information

about the transition to the Medicare prescription drug benefit and the Part D plans that will be offered by the endorsed sponsor or its affiliated organizations. Allowing endorsed sponsors to provide information to their members about certain Part D plans available to them is a component of the Secretary's strategy for meeting his obligation under sections 1851(d)(1) and 1860D–1(c) of the Act to promote an active, informed selection by beneficiaries among their Medicare coverage options.

As a result, this final rule amends § 403.813(a)(1) to allow an endorsed card sponsor to market to its drug card enrollees not only items and products offered within the scope of endorsement, but also Part D plans offered by the endorsed sponsor or an affiliated organization of the endorsed sponsor.

Section 1860D–31(h)(7)(B) of the Act provides that endorsed sponsors may only market products or services ''under the program'' if they directly relate to either a covered discount card drug or discount prices available for over-the-counter drugs. We believe products or services marketed ''under the program'' include not only those within the scope of endorsement, but also Part D plans. Because information about Part D plans offered by an endorsed sponsor or its affiliated organizations would reinforce the purpose of the Medicare prescription drug discount card program to serve as a transitional program to the Medicare prescription drug benefit, we believe marketing of such Part D plans constitutes marketing of a product or service under the Medicare prescription drug discount card program. In addition, we believe Part D plans are directly related to covered discount card drugs, as evidenced by the fact that the statutory definition of a covered drug under section 1860D–31(a)(4)(a) of the Act cross-references the definition of covered Part D drug under section 1860D–2(e) of the Act, and thus is identical to the definition of covered Part D drug.

Therefore, we amend the marketing limitations in § 403.813(a)(1) by explicitly stating that Part D plans offered by an endorsed sponsor or its affiliated organization may be directly marketed by the endorsed sponsor to its enrollees. We will not otherwise change the marketing limitation provisions of the interim final rule because we maintain that section 1860D–31(h)(8) of the Act charges us with protecting and promoting the interests of Medicare beneficiaries who may be unable to access negotiated prices and transitional assistance, as intended by the Congress, if endorsed sponsors require that they pay additional fees for optional products and services, such as Part B supplies. Furthermore, permitting endorsed sponsors to charge additional fees for products and services outside the scope of the endorsement could be confusing to beneficiaries. Also, if we were to allow endorsed sponsors to charge additional fees, we believe beneficiaries might, in effect, be charged annual enrollment fees higher than the $30 limit mandated by section 1860D–31(c)(2)(B) of the Act, especially if endorsed sponsors were to condition enrollment in their endorsed programs on beneficiaries paying these additional fees. The amendment to allow marketing of Part D plans makes sense in this instance because in this context it does not negate the intent or practice of the original restriction (for example, regarding Part B supplies). We believe that this amendment is consistent with the intent of the Congress, which would reduce confusion and facilitate a smooth transition to the Medicare Prescription Drug Benefit which protects and promotes interests of all Medicare beneficiaries. Also, this exception will not affect the enrollment fee.

We will require information and outreach (marketing) materials discussing Part D plans that are disseminated by endorsed drug card sponsors or their affiliated organizations to the endorsed sponsors' drug card enrollees to be approved through the Medicare Prescription Drug Benefit review process as described under § 423.50 as opposed to the drug card review process. This change addresses comments that CMS should create guidelines concerning marketing materials and fairness in marketing, and comments that we should endeavor to reduce beneficiary confusion. Using a single review process, with consistent guidelines specifically developed for Part D materials, is the optimal process for ensuring adherence to guidelines and reducing beneficiary confusion. Therefore, we are amending § 403.806(g)(5) to state that all materials related to Part D plans being offered by the same endorsed sponsor or its affiliated organization must comply with the requirements described in § 423.50.

We are cognizant that constraints and clarifications must be made about whose products an endorsed card sponsor may provide marketing materials about to its drug card enrollees. An endorsed drug card sponsor may market a Part D plan offered by it or its affiliated organization. By allowing an endorsed card sponsor to market Part D plans offered by an affiliated organization of the endorsed sponsor, we are treating Part D plans offered by an affiliated organization of the endorsed sponsor as a product or service under the program. Allowing such treatment gives practical effect to the Congressional intent of a smooth transition between the drug card program and the Medicare Prescription Drug Benefit because it recognizes that rather than offer Part D plans through the same legal entity, organizations may have legitimate business and legal reasons for offering Part D plans through another legal entity, or may offer Part D plans through different legal entities based on geography (for example, Part D plans in region A offered through legal entity A, Part D plans in region B offered through legal entity B). We do not want to constrain an organization's ability to offer its Part D plans through the legal entities that make the most sense given other business and legal considerations. A Part D Plan is not offered under the program, however, if the plan is offered by an organization that is not the endorsed sponsor or an affiliated organization of the endorsed sponsor.

Therefore, we are adding a definition of affiliated organization to § 403.802. This definition would allow an endorsed drug card sponsor to market to its enrollees a Part D plan of an affiliated organization if the organization is legally separate and at least one of the following conditions is met:

(1) Both the affiliated organization and the endorsed drug card sponsor are under common control (common control exists if another entity has the power, directly or indirectly, to significantly influence or direct the actions or policies of the affiliated organization and the endorsed drug card sponsor);

(2) The affiliated organization is under the control of the endorsed drug card sponsor or the affiliated organization controls the endorsed drug card sponsor (control exists if an entity has the power, directly or indirectly, to significantly influence or direct the actions or policies of another entity); or

(3) The affiliated organization possesses an ownership or equity interest of 5 percent or more in the endorsed drug card sponsor on both: The date on which the endorsed drug card sponsor markets the affiliated organization's Part D plan; and the date on which the endorsed drug card sponsor signed its endorsement contract with us. This is to ensure that the entity is currently affiliated with the endorsed sponsor and ensures that a Part D plan does not acquire a drug card sponsor

after publication of this rule in order to gain access to the sponsors' drug card enrollees.

We will not permit endorsed sponsors to market to their drug card enrollees Part D plans offered by unaffiliated third parties (as described by this new section) because an endorsed sponsor's marketing of a Part D plan offered by a third party generally is prohibited by the HIPAA privacy rule absent authorization from the individual.

As important, information that is provided by a drug card sponsor about its or its affiliate's Part D plan will, we believe, be more likely to promote a smoother transition to Part D since the beneficiary is familiar with the endorsed sponsor, and we anticipate that there will be similarities between the Medicare drug discount card and the Part D plan (for example, similar pharmacy network, similar formulary).

Furthermore, under certain circumstances, HIPAA may prohibit an endorsed sponsor's marketing of Part D plans offered by certain affiliated entities. Thus, any use or disclosure of enrollee's protected health information by an endorsed card sponsor must comply with all Federal laws, including the HIPAA Privacy Rule.

IV. Provisions of the Final Regulations

Except as mentioned below, this final rule incorporates the marketing and information and outreach provisions of the interim final rule. This rule creates a definition at section 403.802 pertaining to the requirements that must be met before an organization will be considered an affiliated organization to an endorsed drug card sponsor.

We are also revising § 403.813 to permit an endorsed card sponsor to market to its drug card enrollees a Part D plan offered by the endorsed sponsor or an affiliated organization of the endorsed sponsor.

We will require information and outreach (marketing) materials provided by an endorsed drug card sponsor that are discussing Part D plan offerings to be approved through the Medicare Prescription Drug Benefit review process as described under § 423.50.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact

We have examined the impact of this rule as required by Executive Order 12866 September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 403

Grant programs—health, Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, as set forth below:

PART 403—SPECIAL PROGRAMS AND PROJECTS

■ 1. The authority citation for part 403 continues to read as follows:

Authority: 42 U.S.C. 1359b–3 and secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. In Subpart H, § 403.802 is amended by adding in alphabetical order the definitions of ''Affiliated organization'' and ''Part D plan'' to read as follows:

Subpart H—Medicare Prescription Drug Discount Card and Transitional Assistance Program

§ 403.802 Definitions.

* * * * *

Affiliated organization means an organization that is a legally separate entity from the endorsed drug card sponsor and meets one of the following conditions:

(1) The organization and the endorsed drug card sponsor are under common control. Common control exists if another entity has the power, directly or indirectly, to significantly influence or direct the actions or policies of the organization and the endorsed drug card sponsor.

(2) The organization is under the control of the endorsed drug card sponsor or the organization controls the endorsed drug card sponsor. Control exists if an entity has the power, directly or indirectly, to significantly influence or direct the actions or policies of another entity.

(3) The organization possesses an ownership or equity interest of 5 percent or more in the endorsed drug card sponsor on both the date on which the endorsed drug card sponsor markets the organization's Part D plan, and the date on which the endorsed drug card sponsor signed its endorsement contract with CMS.

* * * * *

Part D plan has the meaning given the term at § 423.4.

* * * * *

■ 3. Section 403.806(g)(5) is amended by—

■ A. Revising paragraph (g)(5)(i).

■ B. Revising paragraph (g)(5)(iii).

■ C. Adding paragraph (g)(5)(vi).

The revisions and addition read as follows:

§ 403.806 Sponsor requirements for eligibility for endorsement.

* * * * *

(g) * * *

(5) * * *

(i) Comply with the Information and Outreach Guidelines published by CMS except as provided in paragraph (g)(5)(vi) of this section.

* * * * *

(iii) If CMS does not disapprove the initial submission of information and outreach materials within 30 days of receipt of these materials, the materials are deemed approved under paragraph (g)(5)(ii) of this section.

* * * * *

(vi) All materials related to products and services that are Part D plans must comply with the requirements specified in § 423.50 of this chapter.

* * * * *

■ 4. Section 403.813 is amended by revising paragraph (a)(1) to read:

§ 403.813 Marketing limitations and record retention requirements.

(a) *Marketing limitations.* (1) An endorsed sponsor may only market the following:

(i) Those products and services offered under the endorsed program that are inside the scope of endorsement defined in § 403.806(h) and permitted under § 403.812(b).

(ii) A Part D plan offered by the endorsed sponsor or an affiliated organization of the endorsed sponsor.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 8, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 10, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–17424 Filed 8–29–05; 11:58 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 422

[CMS–4069–F3]

RIN 0938–AN06

Medicare Program; Establishment of the Medicare Advantage Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment; partial stay of effectiveness.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on January 28, 2005 entitled ''Establishment of the Medicare Advantage Program.'' It also stays several amendments made in the previous rule.

EFFECTIVE DATES: This final rule is effective March 22, 2005. Sections 422.152(a)(1) and (c), 422.156(b)(7), 422.316, and 422.527 are stayed from September 1, 2005 until January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Christopher McClintick, (410) 786–4682.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 05–1322 of January 28, 2005 (70 FR 4588), there were several errors that we identify in the ''Summary of Errors'' section and correct in the ''Correction of Errors'' section below. The provisions in this correcting amendment are effective as if they were included in the final rule published January 28, 2005. Accordingly, the corrections are effective retroactive to March 22, 2005, the effective date of most of the provisions of the January 28, 2005 final rule, except for those provisions that are specifically designated in the **EFFECTIVE DATES** section as being stayed effective September 1, 2005 until January 1, 2006.

II. Summary of Errors

In the January 28, 2005 final rule, on page 4588, we inadvertently omitted from the list of provisions that will become effective January 1, 2006, the following provisions relating to changes in the quality improvement provisions in subpart D: §§ 422.152(a)(1) and (c), and 422.156(b)(7). These provisions implement changes to section 1852(e) of the Social Security Act (the Act) that, under section 722(c) of the MMA, apply to contract years beginning on and after January 1, 2006. Sections 422.152(a)(1) and (c) concern the requirement that an MA organization must have a chronic care improvement program for each plan it offers. In order to clarify that these provisions of the quality improvement requirements do not apply to contracts previous to contract periods beginning January 1, 2006, and to comply with the Act, we are staying the effective dates of §§ 422.152(a)(1) and (c) until January 1, 2006. We are also staying § 422.156(b)(7), a quality improvement provision concerning deemable requirements and Part D prescription drug programs offered by MA programs. We also inadvertently omitted from the list of provisions that will become effective January 1, 2006, the following provisions relating to arrangements with federally qualified health centers: §§ 422.316 and 422.527. Section 237(c) of the MMA provides that these changes apply to services provided on or after January 1, 2006, and contract years beginning on or after that date. In order to clarify the effective dates of these provisions and to bring our regulations into conformance with the statute, we are also staying the effective dates of §§ 422.316 and 422.527 until January 1, 2006.

On page 4676, we clarify that an MA organization and not a practitioner is responsible for providing a written notice to the beneficiary when an adverse decision is made in an office setting. In other words, if an enrollee requests an explanation of a practitioner's denial of an item or service, in whole or in part, the MA organization is responsible for giving the enrollee a written notice. We are making a corresponding change to § 422.568(d) of the regulation text.

On page 4681, we inadvertently specified 72 hours as the timeline for the expedited grievance process MA organizations must establish for complaints involving certain procedural matters in the appeals process. In that discussion, we were referring to 42 CFR 422.564(d), which we redesignated in the final rule as § 422.564(f), but did not otherwise change. The timeline, as

specified in redesignated § 422.564(f), is actually 24 hours. Our correction now specifies this.

On page 4685, we retained language based on, and references to the proposed rule. As a result, we incorrectly referred to the possibility of public comment, and referred to a table of information collection requirements instead of the section of the final rule specifying such requirements.

In addition to correcting errors in the preamble, in section III of this correcting amendment, we also correct several sections of the regulation text. In the summary of the regulation text corrections, we first discuss, in numerical order, changes that are primarily limited to a specific section of the regulation text. We then discuss changes with a broader scope.

A. Corrections to Specific Sections

In § 422.2 of the final rule, in the definition of ''Provider network,'' we inadvertently retained a reference to a ''network MSA plan'' that is no longer valid.

Also in § 422.2 of the final rule, in the definitions of ''Prescription drug plan (PDP)'' and ''Prescription drug plan (PDP) sponsor,'' we incorrectly referred to the pertinent definitions section of the prescription drug regulations. In both instances the references should be to ''§ 423.4,'' the corresponding definitions section for the prescription drug benefit requirements under Part 423.

In the heading for § 422.6, we are replacing the term ''MA user fee'' with ''Cost-sharing in enrollment-related costs,'' as well as removing the first reference in § 422.6(d)(2)(ii) to ''200 million'' in order to avoid repetition and confusion.

In § 422.6(f)(1)(ii) of the final rule, in our requirements concerning cost-sharing of enrollment-related costs for prescription drug plans (PDPs), we inadvertently did not include the text introducing the assessment formula for PDPs.

In § 422.132, we are replacing the incorrect reference to § 422.502(g) with § 422.504(g). The error came about as a result of our reorganization and revision of these contract-related sections of subpart K for the final rule.

In § 422.152(b)(3)(ii), we replace the incorrect reference to ''§ 422.64(c)(10),'' a non-existent provision, with the reference, ''§ 422.64.''

In § 422.208(c)(2) of the final rule, we retained a reference to periodic surveys that are no longer required as a result of section 222(h) of the Medicare Prescription Drug, Improvement and Modernization and Improvement Act of 2003 (MMA).

In § 422.210, we inadvertently deleted paragraph (b), Disclosure to Medicare beneficiaries, which we intended to retain, with the exception of a reference to surveys no longer required.

In § 422.252, in the definition of ''MA monthly supplemental beneficiary premium,'' we are correcting the cross reference to § 422.266(b)(2)(i), which does not exist, and replacing it with the correct reference, § 422.266(b)(1).

In § 422.254, paragraph (b)(1)(i), we are removing ''statutory non-drug bid amount'' and adding ''unadjusted MA statutory non-drug monthly bid amount,'' the defined term, in its place, which was our original intent.

We are amending § 422.314(c)(1)(i) to remove an inadvertent reference to § 422.306. Section 422.306 concerns the capitation rate but not the calculated payment for deposit in the MA MSA, the requirement that is the subject of § 422.314(c).

We are amending § 422.320(c)(1) by removing ''prescription drug beneficiary premium (described at § 422.252)'' and replacing this with ''prescription drug payment described in § 423.315 (if any)'' since § 422.252 refers to the basic definition while § 423.315 describes the actual payment to which § 422.320 is referring. Likewise, we are amending paragraph (c)(2)(ii) of § 422.320 by removing ''beneficiary premium (if any)'' and adding ''payment described in § 423.315 (if any).''

We are amending § 422.458 to include the correct reference to § 422.504(d)(1)(iii), a section specifying contract provisions. Although we revised several sections for the final rule, we inadvertently referred to the previous organization of the managed care regulations and § 422.502(d)(1)(iii) of those regulations.

We are amending § 422.504(h) to reflect the correct reference to the False Claims Act. In the final rule we inadvertently cited ''32 U.S.C. 3729 *et seq.*,'' whereas the correct reference is ''31 U.S.C. 3729 *et seq.*''

In § 422.510(a)(4), we are replacing the term ''PDP sponsor'' with ''MA organization'' as we inadvertently used the term ''PDP sponsor'' in this section.

In § 422.552(a)(3)(iii), we inadvertently did not make a conforming change to the cross reference and, instead of referring to ''subpart J,'' we should have referred to ''subpart K,'' the subpart containing the application and contract requirements.

In § 422.553(b)(2), we inadvertently referred to ''subpart L,'' when intending to refer to ''subpart K,'' and the requirements for applications and contracts.

In §§ 422.562(c)(1)(ii) and 422.622(b)(1)(i), which concern the requirements for appeals of quality improvement organization (QIO) determinations, we incorrectly referenced the CFR Parts governing such appeals. As a result, we are amending these sections by replacing the incorrect references with ''Parts 476 and 478 of Chapter 42 of the CFR'', the correct references.

B. Corrections Affecting Multiple Sections

In the August 3, 2004 proposed rule (69 FR 46866), we proposed to reorganize and revise subparts F and G due to the substantial revisions that the MMA made to pricing and payment rules for MA organization. In reorganizing and revising these subparts to reflect the new MA bidding and payment procedures, we reversed the order of the subparts and reorganized several of the provisions within the subparts. However, in the final rule, we made several errors as a result of this reorganization. Errors primarily consist of cross-references to subparts F and G or sections of the subparts, and other technical changes resulting from our reference to the previous organization of the subparts. Because there are several related errors involving subparts F and G, we address these together, below.

As a result of reorganizing and revising subparts F and G, we incorrectly referred to, or identified several specific sections of these subparts. In the table of contents for subpart G, we incorrectly identified a section of the subpart. Instead of identifying the Announcement of annual capitation rate, benchmarks, and methodology changes as section § 422.312, we incorrectly identified the section as § 422.311. Other sections in which we incorrectly identified or referred to sections in subparts F and G include §§ 422.60(f), 422.66(f)(1), 422.101 (introductory text), 422.101(b)(3)(i), 422, 100(d)(2), 422.103(d)(2), 422.109(a)(1)(ii), 422.216(b)(2), 422.322(b), 422.500(b), and 422.504(a)(8).

Sections in which we revise incorrect references to the subparts F and G themselves include § 422.504(a)(9) through (a)(10), and the introductory text of § 422.504(l), and § 422.752(a)(2).

In another general change related to revision of the payment provisions, we are replacing incorrect terminology and references to the previous payment system. The changes, which replace the ''adjusted community rate'' (ACR), an element of the previous payment rate for

MA organizations, with language reflecting the new bidding process, affect several sections of the regulation. As we do in our discussion of the cross references to subparts F and G, we are discussing these payment language corrections together.

Sections in which we replace the term ''ACR'' with ''bid'' to reflect the new process include §§ 422.206(b)(2)(i) and § 422.503(d)(1). Several of the contract requirements specified in subpart K are also affected. Thus, in § 422.504 we make corrections to reflect the correct payment language in paragraphs (d)(1)(i), (d)(1)(iv), (d)(1)(v) and (l)(4). The changes to remove references to ACR are consistent with § 422.2 of the final rule, where we correctly deleted the definition of ACR.

In another correction affecting several sections of the regulations, we replace incorrect references referring to ''encounter data.'' Just as we changed the term ''ACR'' to ''bid'' in order to be consistent with the statute, we are also changing the term ''encounter data'' to ''data.'' Sections affected include § 422.504(a)(8), (l)(2) through (l)(3), and § 422.510(a)(7). In both the proposed and final rules we discussed that we were no longer requiring encounter data and, instead, are requiring other data, to include risk adjustment data. Although we discussed this change in the preamble (see 70 FR 4661), we inadvertently did not revise the regulation text to reflect this.

In our final rule, we stated that MA organizations, like PDP sponsors, are required to maintain data for the current contract period and 10 prior periods. We discussed this requirement in the comments section of the preamble of the final rule and correctly stated the requirement in the published regulation text. Several other sections of the regulation text should have been amended to reflect the data retention requirement. In this correcting amendment we are making conforming change to those sections (see § 422.504(d), (e)(1)(iii), and (i)(2)(ii)).

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporate a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the Administrative Procedure Act ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. In addition, section 1871(e)(1)(B) of the Act, as amended by section 903(b) of Pub. L. 108–173, provides that substantive changes may take effect before the end of the 30-day period that begins on the date that the Secretary has issued the substantive change only if the waiver of the 30-day period is necessary to comply with statutory requirements or the application of the 30-day delay is contrary to the public interest.

Most of the revisions contained in this rule concern conforming changes, cross references, and typographical errors, and therefore, are not substantive. Because they are not substantive, we find that public comment on these revisions is not necessary. The revisions do not represent changes to our policy, and the public interest would, as a result, be best served by timely correction of these technical errors. A delay in the applicability of the non-substantive changes would be contrary to public interest in that such corrections are necessary for, especially, plans transitioning to the new Medicare Advantage program.

Several of the changes, however, are corrections that could be viewed as substantive. We are staying the effectiveness of certain quality improvement requirements to clarify that MA plans need not meet them until January 1, 2006. Similarly, we are staying the effectiveness of the provisions pertaining to Federally Qualified Health Centers (FQHC) payments. In the case of these substantive corrections, we find that public comment is unnecessary because the corrections are being made to bring the regulations into conformity with the statutory requirements, which themselves do not apply until January 1, 2006. We also find that the 30-day delay ordinarily called for under the APA and section 1871(e)(1)(B) of the Act is contrary to the public interest because there is no statutory authority for these regulatory provisions until January 1, 2006, the effective date of the statutory provisions.

Section 1871(e)(1)(A) of the Act, as amended by section 903(a) of Pub. L. 108–173, provides that a substantive change in regulations shall not be applied retroactively to items and services furnished before the effective date of the change, unless the Secretary finds that such retroactive application is necessary to comply with statutory requirements or failure to apply the change retroactively would be contrary to the public interest.

The provisions of this correcting amendment that apply retroactively make no substantive changes, but merely correct minor technical errors. Failure to make these changes retroactive to March 22, 2005, is contrary to the public interest because of the confusion that could result from the technical errors identified above. It is in the public interest to make the corrections retroactive in that it will help prevent confusion among plans that must now follow these requirements for plans offered in January 1, 2006, the year the new MA program requirements are implemented.

IV. Correction of Errors

Make the following corrections to the January 28, 2005 final rule (70 FR 4588):

1. On page 4676 in column 3, at the end of the first full paragraph add the following: ''Thus, we are making a conforming change to § 422.568(d) to provide that if an enrollee requests an MA organization to provide an explanation of a practitioner's denial of an item or service, in whole or in part, the MA organization must give the enrollee a written notice. This change eliminates the practitioner's requirement to deliver a general notice to an enrollee whenever an adverse decision is made in an office setting. An enrollee retains the right to obtain a detailed notice from an MA organization upon an enrollee's request for an explanation of a practitioner's denial.''

2. On page 4681, column 1, line 7, delete ''72-hour'' and add ''24-hour'' in its place.

3. On page 4685, column 2—

A. In line 8, remove the word ''proposed.''

B. In line 13, remove the word ''Table'' and add the word ''section'' in its place.

C. Remove the paragraph beginning line 15.

List of Subjects in 42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 422:

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Amend § 422.2 as follows:
■ A. Revise the definition for ''Provider network''.
■ B. In the definition for ''Prescription drug plan (PDP)'' remove the reference to ''§ 423.272'' and add ''§ 423.4'' in its place.
■ C. In the definition for ''Prescription drug plan (PDP) sponsor'' remove the reference to ''§ 423.2'' and add ''§ 423.4'' in its place.

The revisions read as follows:

§ 422.2 Definitions.

* * * * *

Provider network means the providers with which an MA organization contracts or makes arrangements to furnish covered health care services to Medicare enrollees under an MA coordinated care plan.

* * * * *

§ 422.4 [Corrected]

■ 3. In § 422.4, amend paragraph (a)(1)(iii) by removing the parenthetical phrase ''(except MSA and PFFS plans)'' and adding in its place ''(except PFFS plans).''

■ 4. In § 422.6—
■ A. Revise the section heading to read as set forth below.
■ B. Revise paragraph (d)(2)(ii) to read as set forth below.
■ C. In paragraph (e), remove the phrase ''for those PDP sponsors PDP sponsors'' and add ''for those PDP sponsors'' in its place.
■ D. Revise paragraph (f)(1)(ii) to read as set forth below.

The revisions read as follows:

§ 422.6 Cost-sharing in enrollment-related costs.

* * * * *

(d) * * *

(2) * * *

(ii) For fiscal year 2006 and each succeeding year, the applicable portion (as defined in paragraph (e) of this section) of $200 million.''

* * * * *

(f) * * *

(1) * * *

(ii) The assessment formula for PDPs: C divided by A times B where—A is the total estimated January payments to all PDP sponsors subject to the assessment; B is the 9-month (January through September) assessment period; and C is the total fiscal year PDP sponsor's user fee assessment amount determined in accordance with paragraph (d)(2) of this section.

* * * * *

§ 422.50 [Corrected]

■ 5. In § 422.50, amend paragraph (a)(4) by removing the reference to ''§ 422.12'' and adding in its place ''§ 422.112.''

§ 422.60 [Corrected]

■ 6. In § 422.60, amend paragraph (f) introductory text by removing the reference to ''§ 422.250(b)'' and adding ''§ 422.308(f)(2)'' in its place.

§ 422.66 [Corrected]

■ 7. In § 422.66 amend paragraph (f)(1) by removing the reference to ''§ 422.250(b)'' and adding ''§ 422.308 (f)(2)'' in its place.

§ 422.100 [Amended]

■ 8. In § 422.100 amend paragraph (d)(2) by removing the reference to ''§ 422.304(b)(2)'' and adding ''§ 422.262(c)(2)'' in its place.

§ 422.101 [Corrected]

■ 9. In § 422.101—
■ A. Amend the introductory text by removing the references to ''§ 422.264'' and ''§ 422.266'' and adding in their place ''§ 422.318'' and ''§ 422.320'', respectively.
■ B. Amend paragraph (b)(3)(i) by removing the reference to ''§ 422.306(a)'' and adding in its place ''§ 422.254(a)(1),'' and by removing the phrase ''adjusted community rate proposals'' and adding ''bid amounts'' in its place.
■ C. Amend paragraph (d)(1) by removing the phrase ''are only permitted'' and adding in its place ''are permitted.''

§ 422.103 [Corrected]

■ 10. In § 422.103, amend paragraph (d)(2) by removing the reference to ''§ 422.252(b)'' and adding in its place ''§ 422.306(a)(2).''

§ 422.109 [Corrected]

■ 11. In § 422.109, amend paragraph (a)(1)(ii) by removing the reference to ''§ 422.254(b)'' and adding in its place ''§ 422.308(a).''

§ 422.111 [Corrected]

■ 12. In § 422.111, amend paragraph (b)(2) by removing the reference to ''MD-PD'' and adding ''MA-PD'' in its place.

§ 422.132 [Amended]

■ 13. In § 422.132 remove the reference to ''§ 422.502(g)'' and add ''§ 422.504(g)'' in its place.

§ 422.152 [Stayed in part]

■ 14. Section 422.152(a)(1) and (c) is stayed effective September 1, 2005 until January 1, 2006.

§ 422.152 [Corrected]

■ 14a. In § 422.152, amend paragraph (b)(3)(ii) by removing the reference to ''§ 422.64(c)(10)'' and adding in its place, ''§ 422.64.''

§ 422.156 [Stayed in part]

■ 15. Section 422.156(b)(7) is stayed effective September 1, 2005 until January 1, 2006.

§ 422.206 [Amended]

■ 16. In § 422.206, amend paragraph (b)(2)(i) by removing the phrase ''ACR'' and adding in its place ''bid''.

§ 422.208 [Corrected]

■ 17. In § 422.208, amend paragraph (c)(2) by removing the phrase ''and conduct periodic surveys in accordance with paragraph (h) of this section''.

■ 18. Revise § 422.210 to read as follows.

§ 422.210 Assurances to CMS.

(a) Assurances to CMS. Each organization will provide assurance satisfactory to the Secretary that the requirements of § 422.208 are met.

(b) Disclosure to Medicare Beneficiaries. Each MA organization must provide the following information to any Medicare beneficiary who requests it:

(1) Whether the MA organization uses a physician incentive plan that affects the use of referral services.

(2) The type of incentive arrangement.

(3) Whether stop-loss protection is provided.

§ 422.216 [Amended]

■ 19. In § 422.216, amend paragraph (b)(2) by removing the reference to ''§ 422.308(b)'' and adding in its place ''§ 422.256(b)(3).''

§ 422.252 [Corrected]

■ 20. In § 422.252, amend the entry, ''MA monthly supplemental beneficiary premium'' by removing the reference to ''§ 422.266(b)(2)(i)'' and adding in its place ''§ 422.266(b)(1).''

§ 422.254 [Corrected]

■ 21. In § 422.254 amend paragraph (b)(1)(i) by removing the phrase ''statutory non-drug bid amount'' and adding ''unadjusted MA statutory non-drug monthly bid amount'' in its place.

§ 422.256 [Corrected]

■ 22. Amend paragraph (c) by removing the reference to ''§ 422.258(b)'' and adding ''§ 422.258(c)'' in its place.

§ 422.314 [Corrected]

■ 23. In § 422.314, amend paragraph (c)(1)(i) by removing the phrase ''determined under § 422.306''.

§ 422. 316 [Stayed]

■ 23a. Section 422.316 is stayed effective September 1, 2005 until January 1, 2006.

§ 422.320 [Corrected]

■ 24. In § 422.320—
■ A. Amend paragraph (c)(1) by removing the phrase ''prescription drug beneficiary premium (described at § 422.252)'' and adding ''prescription drug payment described in § 423.315 (if any)'' in its place.
■ B. Amend paragraph (c)(2)(ii) by removing the phrase ''beneficiary premium (if any)'' and adding ''payment described in § 423.315 (if any)'' in its place.

§ 422.322 [Corrected]

■ 25. In § 422.322—
■ A. Amend paragraph (b) by removing the reference to ''§ 422.264'' and adding ''§ 422.316'' in its place; by removing the reference to ''§ 422.266'' and adding ''§ 422.320'' in its place.
■ B. Amend paragraph (c) by adding the reference ''§ 422.316,'' immediately following the reference to ''§ 422.314''.

■ 26. In § 422.458, revise paragraph (d)(2) to read as follows:

§ 422.458 Risk sharing with regional MA organizations for 2006 and 2007.

* * * * *

(d) * * *

(2) According to § 422.504(d)(1)(iii), CMS has the right to inspect and audit any books and records of the organization that pertain to the information regarding costs provided to CMS under paragraph (b)(2) of this section.

* * * * *

§ 422.500 [Corrected]

■ 27. In § 422.500(b), amend paragraph (1) of the definition of ''Clean claim'' by removing the reference to ''§ 422.257(d)'' and adding ''§ 422.310(d)'' in its place.

§ 422.503 [Corrected]

■ 28. In § 422.503—
■ A. Amend paragraph (b)(4)(vi)(H) by removing the phrase ''MA-PDPs'' and adding ''MA-PDs'' in its place.
■ B. Amend paragraph (d)(1) by removing the phrase ''ACR'' and adding ''bid'' in its place.

§ 422.504 [Corrected]

■ 29. In § 422.504—
■ A. Amend paragraph (a)(8) by removing the cross reference to ''§ 422.257'' and adding ''§ 422.310'' in its place, and by removing ''encounter data'' and adding ''data'' in its place.
■ B. Amend paragraph (a)(9) by removing the cross reference to ''subpart F'' and adding ''subpart G'' in its place.
■ C. Amend paragraph (a)(10) by removing the phrase ''ACR'' and adding ''bid'' in its place; by removing the phrase ''May 1'' and adding ''not later than the first Monday in June'' in its place; and by removing the phrase ''subpart G'' and adding ''subpart F'' in its place.
■ D. Amend paragraph (d), introductory text, by removing the phrase ''6 years'' and adding ''10 years'' in its place.
■ E. Amend paragraphs (d)(1)(i), (d)(1)(iv) and (d)(1)(v) by removing the phrase ''ACR'' and adding ''bid'' in its place wherever it occurs.
■ F. Amend paragraphs (d)(2)(ii) and (d)(2)(iii) by removing the phrase ''six prior periods'' and adding ''10 prior periods'' in its place wherever it occurs.
■ G. Amend paragraph (e)(1)(iii) by removing the phrase ''six prior periods'' and adding ''10 prior periods'' in its place.
■ H. Amend paragraph (h)(1) by removing the reference to ''32 U.S.C. 3729 *et seq.*'' and adding ''31 U.S.C. 3729 *et seq.*'' in its place.
■ I. Amend paragraph (i)(2)(ii) by removing the phrase ''6 years'' and adding ''10 years'' in its place.
■ J. Amend the introductory text of paragraph (l) by removing the cross reference to ''subpart F'' and adding ''subpart G'' in its place, and by removing the phrase ''encounter data.''
■ K. Amend paragraph (l)(2) by removing the phrase ''encounter data'' and adding ''data'' in its place, and by removing the cross reference to ''§ 422.257'' and adding ''§ 422.310'' in its place.
■ L. Amend paragraph (l)(3) by removing the phrase ''encounter data'' and adding ''data'' in its place.''
■ M. Amend paragraph (l)(4) by removing the phrase ''ACR'' and adding ''bid'' in its place and by removing the cross reference to ''§ 422.310'' and adding ''§ 422.254'' in its place.

§ 422.510 [Corrected]

■ 30. In § 422.510—
■ A. Amend paragraph (a)(4) by removing the phrase ''PDP sponsor'' and adding ''MA organization'' in its place.
■ B. Amend paragraph (a)(7) by removing the phrase ''encounter data'' and adding ''data'' in its place, and by removing the reference to ''§ 422.257'' and adding ''§ 422.310'' in its place.

§ 422.527 [Stayed]

■ 30a. Section 422.527 is stayed effective September 1, 2005 until January 1, 2006.

§ 422.552 [Amended]

■ 31. In § 422.552—
■ A. Amend paragraph (a) by removing the phrase ''HCFA'' and adding ''CMS'' in its place.
■ B. Amend paragraph (a)(3)(iii) by removing the reference to ''subpart J'' and adding ''subpart K'' in its place.

§ 422.553 [Amended]

■ 32. In § 422.553, amend paragraph (b)(2) by removing the reference to ''subpart L'' and adding ''subpart K'' in its place.

§ 422.562 [Corrected]

■ 33. In § 422.562, amend paragraph (c)(1)(ii) by removing the phrase ''in part 478 of this chapter'' and adding in its place ''in parts 476 and 478 of this chapter.''

■ 34. In § 422.568 revise paragraph (d) to read as follows:

§ 422.568 Standard timeframes and notice requirements for organization determinations.

* * * * *

(d) *Written notice for MA Organization denials.* If an enrollee requests an MA organization to provide an explanation of a practitioner's denial of an item or service, in whole or in part, the MA organization must give the enrollee a written notice.

* * * * *

■ 35. In § 422.622 revise paragraph (b)(1)(i) to read as follows:

§ 422.622 Requesting immediate QIO review of noncoverage of inpatient hospital care.

* * * * *

(b) * * *

(1) * * *

(i) To the QIO that has an agreement with the hospital under parts 476 and 478 of this chapter.

* * * * *

§ 422.752 [Corrected]

■ 36. In § 422.752, amend paragraph (a)(2) by removing the reference to ''subpart G,'' and adding in its place ''subpart F.''

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital

Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 16, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–17280 Filed 8–26–05; 10:10 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3834

[WO–620–1990–00–24 1A]

RIN 1004–AD75

Mining Claim and Site Maintenance and Location Fees—Fee Adjustment

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim rule.

SUMMARY: The Bureau of Land Management (BLM) is publishing this interim rule to amend regulations found at 43 CFR part 3834, subpart B, related to adjustments of the fees required to be paid for mining claims and mill sites, so as to clarify that mining claimants may cure the filing of an insufficient payment of fees when the fees have changed through any means, including a Consumer Price Index (CPI) adjustment or other statutorily required adjustment.

DATES: The interim rule is effective September 1, 2005.

ADDRESSES: Inquiries may be addressed to the to Bureau of Land Management, Solid Minerals Group, Room 501 LS, 1849 C Street, NW., Washington, DC 20240–001.

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202) 452–0355. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 2004, the Department of the Interior adjusted the location and maintenance fees for mining claims and sites based upon the CPI, as required by the Mining Law. See 69 FR 40294. The Department increased the location fee from $25 to $30 and increased the annual maintenance fee from $100 to $125. The Interior and Related Agencies Appropriations Act for fiscal year 2005, Division E, Title I, Section 120 of Public Law 108–447 of December 8, 2004, directed the Department of the Interior to roll back these location and maintenance fees for mining claims and sites to their pre-July 2004 level. This meant that, as of December 8, 2004, the location fee was rolled back from $30 to $25 per new location and the annual maintenance fee was rolled back from $125 to $100 per mining claim or site.

However, the 2005 Appropriations Act also provided that the fees would return to their increased levels when the Department met certain conditions, including establishing a plan of operations tracking system and filing a report with Congress regarding the length of time it takes the Department to approve proposed mining plans of operations and recommending steps to reduce current delays. As described in the **Federal Register** on July 1, 2005 (70 FR 38192) the Department met these conditions on June 30, 2005. Therefore, in accordance with the terms of the 2005 Appropriations Act, the fees returned to the rates established in 2004 on June 30, 2005. Mining claim holders must pay a $30 location fee and a $125 maintenance fee for all mining claims and sites recorded on or after June 30, 2005. In addition, the annual maintenance fee due on or before September 1, 2005, is $125 per mining claim or site.

BLM noted in the July 1, 2005, **Federal Register** notice that the regulation at 43 CFR 3834.23(c) provides that, if a mining claimant timely pays pre-increase fees, the BLM will provide notice to the claimant and an opportunity to pay the difference. BLM noted that although the fee increase at issue in the July 1, 2005, **Federal Register** notice was not directly a CPI-based increase, the 2004 increase that has been restored was CPI-based. Therefore, BLM noted that it believed that the cure provisions of the rule will apply if a claimant timely pays at least $100 for a claim or site on or before September 1, 2005. However, the BLM noted that it would publish an additional rule before September 1, 2005, further clarifying that mining claimants may cure the filing of an insufficient payment of fees when the fees have changed through any means, including a Consumer Price Index (CPI) adjustment or other statutorily required adjustment. The purpose of this interim rule is to amend the regulations found at 43 CFR part 3834, subpart B, to make this clarification.

II. Discussion of the Interim Rule

Why the Rule Is Being Published on a Interim Basis

BLM is adopting this interim rule to clarify that mining claimants may cure the filing of an insufficient payment of fees when the fees have changed through means other than a CPI adjustment. The existing provision found at 43 CFR 3834.23(b) provides that, after BLM adjusts the fees to reflect a change in the CPI, as required by the Mining Law, claimants who pay the fees timely, but pay the pre-adjustment amount, will be given an opportunity to cure that insufficient payment. This rule will make this curing provision applicable whenever Congress enacts any other statutes that require an adjustment of the fees.

The Department of the Interior, for good cause, finds under 5 U.S.C. 553(b)(B) that notice and public procedure are unnecessary and contrary to the public interest. The clarification to the curing provision is a reasonable and equitable administrative way in which to handle fee adjustments and to avoid inadvertent loss of mining claims due to lack of actual notice of an adjustment. It is in the public interest to provide such equitable means for a mining claimant to be able to cure an underpayment of the fees when the claimant has shown an intent to maintain the claim by paying the pre-adjusted fee amount in a timely manner. This will avoid the disruption of mining operations that would be caused if the mining claimant unintentionally loses their mining claim or site due to a minimal underpayment of fees.

We also determine under 5 U.S.C. 553(d) that there is good cause to place the rule into effect on the date of publication, because a fee adjustment has already occurred and the deadline for filing the adjusted fees for all existing mining claims and sites is September 1, 2005. This rule will make it clear that the BLM will give any claimant who pays the pre-adjusted fee amount in a timely fashion an opportunity to pay the additional amount within 30 days. As such, it grants temporary exemption to the immediate forfeiture of a mining claim due to failure to timely pay fees.

Organization of the Interim Rule

This interim rule amends existing regulations at Subpart B of Part 3834. The existing regulations apply to fee adjustments made in accordance with the CPI, as required by the Mining Law. The amendment will apply to fee adjustments made in accordance with other statutes.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, BLM has determined that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

- The rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The cure provision does not change the substance of current mining claim administration within BLM.
- This rule will not create inconsistencies with other agencies' actions. It does not change the relationships of BLM to other agencies and their actions.
- This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule does not address any of these programs.
- This rule will not raise novel legal or policy issues because it makes no major substantive changes in the regulations. The cure provision avoids any potential takings liability to BLM due to a fee adjustment beyond the control of the BLM.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule will have a minor impact because underpaid fees by small entities will be a curable defect. A final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

For the purposes of this section a ''small entity'' is an individual, limited partnership, or small company, at ''arm's length'' from the control of any parent companies, with fewer than 500 employees or less than $5 million in revenue. This definition accords with Small Business Administration regulations at 13 CFR 121.201.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of $100 million or more. As explained in section I above, the revised regulations will not materially alter current BLM policy. The cure provision avoids any potential adverse effects on the economy.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule may affect the cost to locate, record, or maintain a mining claim or site.
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

- This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is unnecessary.
- This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The changes implemented in this rule do not require anything of any non-Federal governmental entity.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have takings implications. A takings implication assessment is not required. Nothing in this rule constitutes a taking. This rule will avoid any takings liability that would otherwise arise by not making an underpayment curable. This rule does not substantially change BLM policy.

Executive Order 12612, Federalism

In accordance with Executive Order 12612, BLM finds that the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not change the role or responsibilities between Federal, State, and local governmental entities, nor does it relate to the structure and role of States or have direct, substantive, or significant effects on States.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, BLM finds that the rule does not unduly burden the judicial system and therefore meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the drafting process.

Paperwork Reduction Act

The BLM has determined this rulemaking does not contain any new information collection requirements that the Office of Management and Budget (OMB) must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB has approved the information collection requirements in the regulations under OMB control number 1004–0114, which expires December 31, 2006.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). The amended cure provision in this rule is in response to an Act of Congress and allows mining claimants to cure their underpayment of fees that have been adjusted according to the CPI or an Act of Congress. The full effects of the rulemaking that this provision amends are discussed at 68 FR 61063 and those conclusions are adopted here. Therefore, this rule is categorically excluded from the need to prepare an Environmental Analysis. Because this rule does not substantially change BLM's overall management objectives or environmental compliance requirements, it would have no impact on, or only marginally affect, the following critical elements of the human environment as defined in Appendix 5 of the BLM National Environmental Policy Act Handbook (H–1790–1): air quality, areas of critical environmental concern, cultural resources, Native American religious concerns, threatened or endangered species, hazardous or solid waste, water quality, prime and unique farmlands, wetlands, riparian zones, wild and scenic rivers, environmental justice, and wilderness.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have considered the impact of this rule on the interests of Tribal governments. Because Indian reservation lands are not available for the location of mining claims or sites, this rule does not specifically involve government-to-government relationships. These relationships will remain unaffected.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. To the extent that the rule affects the mining of energy minerals (*i.e.*, uranium and other fissionable metals), the rule may save mining claims or sites that would otherwise be forfeited for the late payment of insufficient location and/or maintenance fees. It will not change financial obligations of the mining industry.

Authors

The principal author of this interim rule is Roger Haskins in the Solid Minerals Group, assisted by Frank Bruno in the Regulatory Affairs Group, Washington Office, BLM.

List of Subjects in 43 CFR Part 3834

Maintenance fees; mines; public lands—mineral resources; reporting and record keeping requirements.

Dated: August 26, 2005.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons stated in the preamble, and under the authority of sections 441 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201 and 1457); and sections 2319 and 2324 of the Revised Statutes, as amended (30 U.S.C. 22 and 28); part 3834, Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows:

PART 3834—REQUIRED FEES FOR MINING CLAIMS OR SITES

■ 1. The authority citation for part 3834 continues to read as follows:

Authority: 30 U.S.C. 28f; 30 U.S.C. 242; 43 U.S.C. 1201, 1740; 115 Stat 414.

Subpart B—Fee Adjustment

■ 2. Revise § 3834.21 to read as follows:

§ 3834.21 How will BLM adjust the location and maintenance fees?

BLM will adjust the location and maintenance fees at least every 5 years, based upon the CPI, as required by 30 U.S.C. 28j(c), or at any other time as required by other statute.

■ 3. Revise § 3834.23 to read as follows:

§ 3834.23 When do I start paying the adjusted fees?

(a) In the case of a CPI adjustment required by 30 U.S.C. 28j(c), you must pay the adjusted initial maintenance and location fees when you record a new mining claim or site located on or after the September 1 that immediately follows the date BLM published its notice about the adjustment.

(b) In the case of adjustments required by other statute, you must pay the adjusted initial maintenance and location fees for a new mining claim or site as provided in the statute.

(c) For previously recorded mining claims and sites, you must pay the CPI-based adjusted maintenance fee on or before the September 1 that immediately follows the date BLM published its notice about the adjustment.

(d) Notwithstanding 43 CFR 3830.91(a)(3) and 3830.96, in any year in which BLM adjusts the maintenance and location fees, if you pay the fees timely, but pay an amount based on the fee in effect immediately before the adjustment was made, BLM will send you a notice, as provided in § 3830.94, giving you 30 days in which to pay the additional amount required to meet the adjusted fees. If you do not pay the additional amount due within 30 days after the date you received the notice, you will forfeit the affected mining claims or sites.

[FR Doc. 05–17534 Filed 8–31–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2004–D034]

Defense Federal Acquisition Regulation Supplement; Restrictions on Totally Enclosed Lifeboat Survival Systems

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove text addressing restrictions on the acquisition of totally enclosed lifeboat survival systems. The restrictions are based on fiscal year 1994 and 1995 appropriations act provisions, that are no longer considered applicable, and other statutory provisions that apply only to the Navy.

DATES: Effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2004–D034.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes DFARS 225.7008, Restrictions on totally enclosed lifeboat survival systems, and the corresponding contract clause at DFARS 252.225–7039. These restrictions implement Section 8124 of the Fiscal Year 1994 DoD Appropriations Act (Pub. L. 103–139), Section 8093 of the Fiscal Year 1995 DoD Appropriations Act (Pub. L. 103–335), and 10 U.S.C. 2534. The fiscal year 1994 and 1995 appropriations act restrictions are no longer considered applicable. 10 U.S.C. 2534 applies to the acquisition of totally enclosed lifeboats that are components of naval vessels. Since this restriction impacts only the Navy, and 10 U.S.C. 2534(h) specifies that DoD may not use contract clauses or certifications, but must use management and oversight techniques, to implement this restriction, DFARS coverage for implementation of this restriction is considered unnecessary.

DoD published a proposed rule at 70 FR 14628 on March 23, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the domestic source restrictions of 10 U.S.C. 2534 still apply to the acquisition of totally enclosed lifeboats that are components of naval vessels. 10 U.S.C. 2534 requires that DoD acquire such lifeboats only if the manufacturer is part of the national technology and industrial base.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.7008 [Removed and Reserved]

■ 2. Section 225.7008 is removed and reserved.

225.7008–1 through 225.7008–4 [Removed]

■ 3. Sections 225.7008–1 through 225.7008–4 are removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7039 [Removed and Reserved]

■ 4. Section 252.225–7039 is removed and reserved.

[FR Doc. 05–17351 Filed 8–31–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2004–D033]

Defense Federal Acquisition Regulation Supplement; Levy on Payments to Contractors

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address the effect of Internal Revenue Service (IRS) levies on contract payments. The rule requires DoD contractors to promptly notify the contracting officer if a levy that will jeopardize contract performance is imposed on a contract.

DATES: *Effective date:* September 1, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before October 31, 2005 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D033, using any of the following methods:

○ Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

○ Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.

○ E-mail: *dfars@osd.mil.* Include DFARS Case 2004–D033 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Mr. Bill Sain, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

The Debt Collection Improvement Act of 1996 authorized a centralized program for the offset of Federal payments, including contract payments to collect delinquent non-tax debts owed to the Federal Government. To implement this authority, the Department of the Treasury created the Treasury Offset Program (TOP). The Taxpayer Relief Act of 1997 authorized the Internal Revenue Service to continuously levy up to 15 percent of certain Federal payments, including contract payments. To implement this authority, the Federal Payment Levy Program (FPLP) was created. The FPLP is an automated process that uses the TOP system to match delinquent tax debts with Federal payments. When a match occurs, the payment is levied and applied to the tax debt. The FPLP process works in tandem with a manual ''paper'' levy process outlined in 26 U.S.C. 6331–6332.

Section 887, Modification of Continuing Levy on Payments to Federal Vendors, of Public Law 108–357 amends Section 6331(h) of the Internal Revenue Code by raising the amount of levy the Government may withhold on Federal payments for goods or services sold or leased to the Federal Government, from 15 percent to 100 percent.

This interim DFARS rule is intended to address contract non-performance that may result from application of a levy.

New Contract Clause Stating Government Right To Assess Levy

While DoD has been participating in the levy program for a number of years, neither the FAR nor the DFARS includes a clause addressing levies. DoD believes that such a clause, along with implementing DFARS language in Part 232, is needed to ensure that all parties understand their rights and obligations related to the assessment of a levy.

Levies That Jeopardize Contract Performance

DoD is concerned that situations may arise in which the levy of a contract payment could jeopardize contract performance. As such, the DFARS needs to include coverage addressing the process to be followed when such situations arise.

The levy process makes it impractical, in most cases, to identify whether a levy will jeopardize contract performance prior to a contract payment being levied. While the contractor may have received a notice of potential levy, that notice does not identify which contract or contracts to which the levy will be applied. Furthermore, it is the contractor's responsibility for identifying a levy that will significantly impact contract performance, since it is the contractor's liability that has created the situation. Therefore, this interim rule requires that the contractor notify the contracting officer when a levy is imposed on a DoD contract payment and that the contractor state whether it believes the levy jeopardizes contract performance. In addition, the contractor is required to advise the contracting officer if the contractor is aware of any adverse effect on national security that may result from the inability to perform the contract. The contracting officer will take appropriate action on the instant contract.

When the contractor believes the levy jeopardizes contract performance, it is important that DoD have a timely process for addressing those cases. The interim rule requires the Government to promptly review the contractor's assessment and either agree or disagree that contract performance will be jeopardized. When the Government disagrees with the contractor's assessment, the Government will notify the contractor and no further action will be taken. When the Government agrees with the contractor's assessment that the levy will jeopardize contract performance and also believes that the lack of performance will adversely affect national security, some or all of the monies collected will be returned to the contractor. When the Government

agrees with the contractor's assessment that the levy will jeopardize contract performance but does not believe that the lack of performance will impact national security, the Government will notify the contractor and will recommend that the contractor promptly contact the IRS to attempt to resolve the tax situation.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to those contractors that have a delinquent tax debt. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D033.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*. Although the rule requires contractors to provide certain information to the Government when levies are imposed on DoD contract payments, the number of contractors that will be subject to this requirement is expected to be less than 10 per year.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule establishes DoD policy regarding levies on contract payments. The IRS has begun implementing its legislative authority to levy up to 100 percent of contract payments, up to the amount of tax debt. Such levies could jeopardize contract performance and adversely affect national security. Therefore, it is necessary to ensure that all parties understand their rights and obligations related to the assessment of a levy. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 237 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 237 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Subpart 232.71 is added to read as follows:

Subpart 232.71—Levies on Contract Payments

Sec.

232.7100 Scope of subpart.

This subpart prescribes policies and procedures concerning the effect of levies pursuant to 26 U.S.C. 6331(h) on contract payments. The Internal Revenue Service (IRS) is authorized to levy up to 100 percent of all payments made under a DoD contract, up to the amount of the tax debt.

232.7101 Policy and procedures.

(a) The contracting officer shall require the contractor to—

(1) Promptly notify the contracting officer when a levy that will jeopardize contract performance is imposed on a DoD contract; and

(2) Advise the contracting officer whether the inability to perform may adversely affect national security.

(b) The contracting officer shall promptly notify the Director, Defense Procurement and Acquisition Policy (DPAP), when the contractor's inability to perform will adversely affect national security or will result in significant additional costs to the Government. Follow the procedures at PGI 232.7101(b) for reviewing the contractor's rationale and submitting the required notification.

(c) The Director, DPAP, will promptly review the contractor's rationale and will notify the IRS, the contracting officer, and/or the payment office in accordance with the procedures at PGI 232.7101(c). The contracting officer shall then notify the contractor in accordance with paragraph (c) of the clause at 252.232–7010.

232.7102 Contract clause.

Use the clause at 252.232–7010, Levies on Contract Payments, in all solicitations and contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.232–7010 is added to read as follows:

252.232–7010 Levies on Contract Payments.

As prescribed in 232.7102, use the following clause:

Levies on Contract Payments (SEPT 2005)

(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the levy will jeopardize contract performance, the Contractor shall promptly notify the Procuring Contracting Officer and provide—

(1) The total dollar amount of the levy;

(2) A statement that the levy will jeopardize contract performance, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment and provide a notification to the Contractor including—

(1) A statement as to whether DoD agrees that the levy jeopardizes contract performance; and

(2) If the levy jeopardizes contract performance and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(3) If the levy jeopardizes contract performance but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of clause)

[FR Doc. 05–17349 Filed 8–31–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 237 and 252

[DFARS Case 2005–D007]

Defense Federal Acquisition Regulation Supplement; Training for Contractor Personnel Interacting With Detainees

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1092 of the National Defense Authorization Act for Fiscal Year 2005. Section 1092 requires that DoD contractor personnel who interact with detainees receive training regarding the applicable international obligations and laws of the United States.

DATES: *Effective date:* September 1, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before October 31, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005–D007, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2005–D007 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds policy at DFARS 237.171 and a contract clause at DFARS 252.237–7019, Training for Contractor Personnel Interacting with Detainees, to implement Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 1092 requires DoD to prescribe policies to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, treat persons detained by the U.S. Government in a humane manner consistent with the international obligations and laws of the United States. These policies must include requirements for training of DoD contractor personnel interacting with detainees.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Government will provide the training required by the rule. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005–D007.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375), enacted on October 28, 2004. Section 1092 requires that DoD contractor personnel who interact with detainees receive appropriate training. Such training is needed to ensure that all persons acting on behalf of the Armed Forces treat persons detained by the U.S. Government in a humane manner consistent with the international obligations and laws of the United States. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 237 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 237 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

■ 2. Sections 237.171 through 237.171–4 are added to read as follows:

237.171 Training for contractor personnel interacting with detainees.

237.171–1 Scope.

This section prescribes policies to prevent the abuse of detainees, as required by Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

237.171–2 Definition.

Detainee, as used in this section, is defined in the clause at 252.237–7019, Training for Contractor Personnel Interacting with Detainees.

237.171–3 Policy.

(a) Each DoD contract in which contractor personnel, in the course of their duties, interact with individuals detained by DoD on behalf of the U.S. Government shall include a requirement that such contractor personnel—

(1) Receive training regarding the international obligations and laws of the United States applicable to the detention of personnel; and

(2) Acknowledge receipt of the training.

(b) The combatant commander responsible for the area where the detention or interrogation facility is located will provide the training to contractor personnel. For information on combatant commander geographic areas of responsibility and point of contact information for each command, see PGI 237.171–3(b).

(c) See PGI 237.171–3(c) for additional guidance from the Secretary of Defense on implementation of Section 1092 of Public Law 108–375.

237.171–4 Contract clause.

Use the clause at 252.237–7019, Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts for the acquisition of services if—

(a) The clause at 252.225–7040, Contractor Personnel Supporting a Force Deployed Outside the United States, is included in the solicitation or contract; or

(b) The services will be performed at a facility holding detainees, and contractor personnel in the course of their duties may be expected to interact with the detainees.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(SEPT 2005)''; and

■ b. In paragraphs (b) and (c), by adding, in numerical order, new entries to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

* * * * *

(b) * * *

____252.237–7019 Training for Contractor Personnel Interacting with Detainees (AUG 2005) (Section 1092 of Pub. L. 108–375).

* * * * *

(c) * * *

____252.237–7019 Training for Contractor Personnel Interacting with Detainees (AUG 2005) (Section 1092 of Pub. L. 108–375).

* * * * *

■ 4. Section 252.237–7019 is added to read as follows:

252.237–7019 Training for Contractor Personnel Interacting with Detainees.

As prescribed in 237.171–4, use the following clause:

Training for Contractor Personnel Interacting With Detainees (SEPT 2005)

(a) *Definitions.* As used in this clause—

Combatant Commander means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

Detainee means a person in the custody or under the physical control of the Department of Defense on behalf of the United States Government as a result of armed conflict or other military operation by United States armed forces.

Personnel interacting with detainees means personnel who, in the course of their duties, are expected to interact with detainees.

(b) *Training requirement.* This clause implements Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

(1) The Combatant Commander responsible for the area where a detention or interrogation facility is located will provide training for contractor personnel interacting with detainees. The training will address the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions. The Combatant Commander will issue a training receipt document to personnel who have completed the training.

(2)(i) The Contractor shall arrange for its personnel interacting with detainees to—

(A) Receive the training specified in paragraph (b)(1) of this clause prior to interacting with detainees and annually thereafter; and

(B) Acknowledge receipt of the training through acknowledgment of the training receipt document specified in paragraph (b)(1) of this clause.

(ii) To make these arrangements, the following points of contact apply:

[Contracting Officer to insert applicable point of contact information cited in PGI 237.171–3(b).]

(3) The Contractor and its personnel interacting with detainees shall retain a copy of the training receipt document(s) issued and acknowledged in accordance with paragraphs (b)(1) and (2) of this clause until the contract is closed.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that may require contractor personnel to interact with detainees in the course of their duties.

(End of clause)

[FR Doc. 05–17347 Filed 8–31–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 242

[DFARS Case 2004–D007]

Defense Federal Acquisition Regulation Supplement; Assignment of Contract Administration—Exception for Defense Energy Support Center

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect a memorandum of agreement between the Defense Contract Management Agency and the Defense Energy Support Center that provides for the Defense Energy Support Center to perform contract administration functions for all contracts it awards. This arrangement eliminates duplication of effort in the bulk fuel quality management program.

DATES: Effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2004–D007.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 242.202(a)(i) specifies that, with certain exceptions, DoD activities shall not retain any contract for administration that requires performance of contract administration functions at or near contractor facilities. This final rule adds a new exception to the policy at DFARS 242.202(a)(i) to reflect a memorandum of agreement between the Defense Contract Management Agency and the Defense Energy Support Center, which provides for the Defense Energy Support Center to perform contract administration functions for all contracts it awards. This arrangement eliminates duplication of effort in the bulk fuel quality management program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2004–D007.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 242

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 242 is amended as follows:

■ 1. The authority citation for 48 CFR Part 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 2. Section 242.202 is amended as follows:

■ a. In paragraph (a)(i)(P) by removing at the end ''and'';

■ b. In paragraph (a)(i)(Q) by removing the period and adding ''; and''; and

■ c. By adding paragraph (a)(i)(R) to read as follows:

242.202 Assignment of contract administration.

(a)(i) * * *

(R) The Defense Energy Support Center, Defense Logistics Agency.

* * * * *

[FR Doc. 05–17350 Filed 8–31–05; 8:45 am]

BILLING CODE 5001–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050426117–5117–01; I.D. 082605A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #6 - Adjustment of the Recreational Fishery from the U.S.-Canada Border to Cape Alava, Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of fishing seasons; request for comments.

SUMMARY: NMFS announces a regulatory modification in the recreational fishery from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea). Effective Tuesday, August 16, 2005, the Neah Bay Subarea was modified to a have a daily bag limit as follows: ''All salmon, two fish per day, and all retained coho must have a healed adipose fin clip.'' All other restrictions remain in effect as announced for 2005 Ocean Salmon Fisheries. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures.

DATES: Effective 0001 hours local time (l.t.), Tuesday, August 16, 2005, until the Chinook quota or coho quota are taken, or 2359 hours l.t., September 18, 2005, which ever is earlier; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures.

Comments will be accepted through September 16, 2005.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2005salmonIA6.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [050426117–5117–01 and/or I.D. 082605A] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) has adjusted the recreational fishery from U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), with one regulatory modification. Effective Tuesday, August 16, 2005, the Neah Bay Subarea was modified to a have a daily bag limit as follows: ''All salmon, two fish per day, and all retained coho must have a healed adipose fin clip.'' All other restrictions remain in effect as announced for 2005 Ocean Salmon Fisheries. On August 11, 2005, the Regional Administrator had determined that the catch was less than anticipated preseason and that provisions designed to slow the catch of Chinook could be modified.

All other restrictions remained in effect as announced for 2005 Ocean Salmon Fisheries. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures. Modification in recreational bag limits and recreational fishing days per calendar week is authorized by regulations at 50 CFR 660.409(b)(1)(iii).

In the 2005 annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), NMFS announced the recreational fisheries: the area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea) opened July 1 through the earlier of September 18 or a 12,667 marked coho subarea quota with a subarea guideline of 4,300 Chinook; the area from Cape Alava to Queets River, WA (La Push Subarea) opened July 1 through the earlier of September 18 or a 3,067 marked coho subarea quota with a subarea guideline of 1,900 Chinook; the area from Queets River to Leadbetter Point, WA (Westport Subarea) opened June 26 through the earlier of September 18 or a 45,066 marked coho subarea quota with a subarea guideline of 28,750 Chinook; the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea) opened July 3 through the earlier of September 30 or a 60,900–marked coho subarea quota with a subarea guideline of 8,200 Chinook. The Neah Bay and La Push Subareas were opened Tuesday through Saturday, and the Westport and Columbia River Subareas were opened Sunday through Thursday. All subareas had a provision that there may be a conference call no later than July 27 to consider opening seven days per week. All subareas were restricted to a Chinook minimum size limit of 24 inches (61.0 cm) total length. In addition, all of the subarea bag limits were for all salmon, two fish per day, no more than one of which may be a Chinook, with all retained coho required to have a healed adipose fin clip.

The recreational fisheries in the area from Cape Alava, WA, to Cape Falcon, OR (La Push, Westport, and Columbia River Subareas), were modified by Inseason Action #5, effective Friday, July 29, 2005, to be open seven days per week, with a modified daily bag limit as follows: ''All salmon, two fish per day, and all retained coho must have a healed adipose fin clip.'' All other restrictions remain in effect as announced for 2005 Ocean Salmon Fisheries (70 FR 47727, August 15, 2005).

On August 11, 2005, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the Chinook and coho catch rates, and effort data indicated that the catch was less than anticipated preseason and that the provision designed to slow the catch of Chinook could be modified by relaxing the bag limit. As a result, on August 11, 2005, the states recommended, and the RA concurred, that effective Tuesday, August 16, 2005, the Neah Bay Subarea would be modified to a have a daily bag limit as follows: ''All salmon, two fish per day, and all retained coho must have a healed adipose fin clip.'' All other restrictions remained in effect as announced for 2005 Ocean Salmon Fisheries.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters

adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the already described regulatory action was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modification had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of this action would limit fishers appropriately controlled access to available fish during the scheduled fishing season by unnecessarily maintaining the restriction. The action allowed fishers to land up to two of any species of salmon, previously only one of the two fish bag limit could be a Chinook salmon.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–17453 Filed 8–31–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 169
Thursday, September 1, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

8 CFR Chapter I

[DHS 2005–0023]

RIN 1651–AA66

DEPARTMENT OF STATE

22 CFR Chapter I

RIN 1400–AC10

Documents Required for Travel Within the Western Hemisphere

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security, Bureau of Consular Affairs, Department of State.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Under the Immigration and Nationality Act (INA), nonimmigrant aliens and United States citizens are generally required to present passports to enter the United States. The Secretary of Homeland Security and the Secretary of State have the joint authority to waive this requirement for nonimmigrant aliens under certain circumstances and the Secretary of State has the authority to make exceptions to the requirement for United States citizens. In accordance with those authorities, current regulations permit United States citizens and nonimmigrant aliens from Canada, Bermuda and Mexico to enter the United States from certain Western Hemisphere countries without presenting a passport.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). Section 7209 of this statute limits the Secretaries' discretion to waive or to make exceptions to the passport requirements under the INA and expressly provides that, by January 1, 2008, United States citizens and nonimmigrant aliens may enter the United States only with passports or such alternatives as the Secretary of Homeland Security may designate as satisfactorily establishing identity and citizenship. In the future, as a result of the implementation of the new statute, travel to the United States by United States citizens and others from the Western Hemisphere will require a passport or acceptable alternative documents in circumstances where travel was previously permitted without such documents.

Section 7209 directs that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan relating to the new requirements ''as expeditiously as possible.'' The statute provides that this plan shall be implemented no later than January 1, 2008. The Secretary of Homeland Security, in consultation with the Secretary of State, will be deciding how to implement the new law. This Advance Notice of Proposed Rulemaking announces the rulemakings that are expected to implement the new law, invites comments on the possible means of implementation and specifically invites comments on the documents other than passports that should be accepted under section 7209 as sufficient to establish citizenship and identity.

DATES: Written comments must be submitted on or before October 31, 2005.

ADDRESSES: Comments, identified by docket number or RIN number, may be submitted by one of the following methods:

- EPA Federal Partner EDOCKET Web Site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Comments by mail are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments by mail may be inspected at the Bureau of Customs and Border Protection at 799 9th Street, NW., Washington, DC. To inspect comments, please call (202) 572–8768 to arrange for an appointment.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments will be posted without change to *http://www.epa.gov/feddocket,* including any personal information sent with each comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation in Rulemaking Process'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or submitted comments, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at the Bureau of Customs and Border Protection at 799 9th Street, NW., Washington, DC. To inspect comments, please call (202) 572–8768 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Department of Homeland Security: Theresa Brown, Office of Policy and Planning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 4.4–D, Washington, DC 20229, telephone number (202) 344–3022.

Department of State: Sharon Palmer-Royston, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, telephone number (202) 663–2662.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

ANPRM—Advance Notice of Proposed Rulemaking
BCC—Form DSP–150, B–1/B–2 Visa and Border Crossing Card
CBP—Bureau of Customs and Border Protection
DHS—Department of Homeland Security
DOS—Department of State
FAST—Free and Secure Trade
INA—Immigration and Nationality Act
IRTPA—Intelligence Reform and Terrorism Prevention Act of 2004
LPR—Lawful Permanent Resident
SENTRI—Secure Electronic Network for Travelers Rapid Inspection

Background

Enactment of Intelligence Reform and Terrorism Prevention Act of 2004

The President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. 108–458, 118 Stat. 3638, on December 17, 2004. The

statute obligates the Secretary of Homeland Security to develop and implement a plan to require United States citizens and nationals of certain Western Hemisphere countries to present a passport or other identity and citizenship documents when entering the United States from countries in the Western Hemisphere.[1] As a result of the enactment of section 7209 of IRTPA, the Secretary of Homeland Security, in consultation with the Secretary of State, must develop and implement the plan by January 1, 2008.

Current Entry Requirements for United States Citizens

In general, under federal law it is ''unlawful for any citizen of the United States to depart from or enter * * * the United States unless he bears a valid United States passport.'' [2] However, United States citizens now are exempt from the statutory passport requirement when coming from the Western Hemisphere other than from Cuba.[3] Currently, a United States citizen entering the United States from the Western Hemisphere, other than from Cuba, is inspected at the border by a Bureau of Customs and Border Protection (CBP) officer. To lawfully enter the United States, the arriving individual need only satisfy the CBP officer of his or her United States citizenship. In addition to examining whatever documentation the individual submits, the CBP officer may ask for additional identification and proof of citizenship until such time as the CBP officer is satisfied that the entering individual is a United States citizen.

As a result of this procedure, United States citizens arriving from within the Western Hemisphere now may provide other documents in lieu of a passport to satisfy a CBP officer. A driver's license issued by a state motor vehicle administration or other competent state government authority is the most common form of identity document now accepted at the border. The citizenship documents now accepted at the border include birth certificates issued by a United States jurisdiction, Certificates of Naturalization, and Certificates of Citizenship.

Current Entry Requirements for Nonimmigrant Aliens

Currently, each nonimmigrant alien arriving in the United States must present to the CBP officer at the border a valid unexpired passport issued by his or her country of citizenship and a valid unexpired visa issued by a United States embassy or consulate abroad.[4] The only current general exception to the passport requirement applies to the admission of (1) nationals of Canada and Bermuda arriving from anywhere in the Western Hemisphere other than Cuba and (2) Mexican nationals with a Border Crossing Card (BCC) arriving from contiguous territory.

Canadian Citizens and Citizens of the British Overseas Territory of Bermuda

When entering the United States as nonimmigrant visitors from countries in the Western Hemisphere other than Cuba, Canadian citizens and citizens of the British Overseas Territory of Bermuda need not present a valid passport and visa.[5] They currently are required, however, to satisfy the inspecting CBP officer of their identity and citizenship at the time of application for admission. The entering alien may present any proof of citizenship in his or her possession. An individual who initially fails to satisfy the examining CBP officer that he or she is a Canadian citizen or citizen of the British Overseas Territory of Bermuda may then be required by CBP to provide further identification and proof of citizenship such as a birth certificate, passport, or citizenship card.

Mexican Citizens

Mexican citizens traveling to the United States for pleasure or for business who are in possession of a Form DSP–150, B–1/B–2 Visa and Border Crossing Card (BCC) are not required to present a valid passport when coming from contiguous territory.[6] A BCC is a machine-readable, biometric card, issued by the U.S. Department of State, Bureau of Consular Affairs. DHS anticipates that BCCs will continue to be acceptable under IRTPA.

Travel Document Requirements Under the Intelligence Reform and Terrorism Prevention Act of 2004

Under section 7209 of IRTPA, both United States citizens and nonimmigrant aliens who currently do not require passports to enter the United States, will require a valid passport or other identity and citizenship document to enter the United States.[7] At that time, United States citizens and nonimmigrant aliens will need to present documents when traveling from countries within the Western Hemisphere to the United States that have not been required in the past. The principal groups affected are United States citizens, Canadian citizens, citizens of the British Overseas Territory of Bermuda, and Mexican citizens. These are the groups currently exempt from the general passport requirement when entering the United States from within the Western Hemisphere. Section 7209 sets January 1, 2008 as the deadline for the development and implementation of the plan relating to the new requirements.

Section 7209 of IRTPA also requires that the Secretaries of Homeland Security and State expedite the travel of frequent travelers, including those who reside in border communities. Section 7209 specifically requires that the Secretaries make readily available a registered traveler program as one means to expedite travel for frequent travelers. DHS currently operates registered traveler programs that benefit United States citizens and foreign nationals entering the United States from Canada and Mexico, such as the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) program and the joint United States-Canadian NEXUS program. In addition, the Free and Secure Trade (FAST) program allows expedited clearance of registered commercial vehicle drivers. DHS will continue to improve and expand travel facilitation programs consistent with the requirements of IRTPA.

According to IRTPA, following the complete implementation of this plan, neither the Secretary of State nor the Secretary of Homeland Security may waive these document requirements for classes of nonimmigrant aliens traveling to the United States.[8] For United States

[1] Section 7209 does not apply to Lawful Permanent Residents (LPR), who will continue to be able to enter the United States upon presentation of a valid Form I–551, Alien Registration Card, or other valid evidence of permanent resident status. Section 211(b) of the INA, 8 U.S.C. 1181(b). It also does not apply to military personnel traveling under orders. Section 284 of INA, 8 U.S.C. 1354.

[2] *See* section 215(b) of the INA, 8 U.S.C. 1185(b).

[3] *See* 22 CFR 53.2(b), which waived the passport requirement pursuant to section 215(b) of the INA, 8 U.S.C. 1185(b).

[4] *See* INA § 212(a)(7)(B)(i), 8 U.S.C. 1182(a)(7)(B)(i).

[5] *See* 8 CFR 212.1(a)(1)(Canadian citizens) and 212.1(a)(2)(Citizens of Bermuda).

[6] *See* 8 CFR 212.1(c)(1)(i). There are other very narrow exceptions for Mexican citizens such as a Mexican citizen who is entering the United States from Mexico solely to apply for a Mexican passport or other ''official Mexican document'' at a Mexican consulate in the United States. See 8 CFR 212.1(c)(1)(ii).

[7] Section 7209 requires this change by limiting the authority previously used by the Secretaries to waive the generally applicable document requirements. This authority is set out in Section 212(d)(4)(B) of the INA, 8 U.S.C. 1182(d)(4)(B), and section 215(b) of the INA, 8 U.S.C. 1185(d)(4)(B) (delegated to the Secretary of State under Executive Order 13323, 69 FR 241 (Dec. 30, 2003).

[8] Other statutory waiver authority is not affected so that waivers may still be granted in individual

citizens, the new document requirements may be waived but only in three circumstances specifically spelled out in section 7209: (1) When the Secretary of Homeland Security determines that ''alternative documentation'' different from that then being required under section 7209 is sufficient; (2) in an individual case of an unforeseen emergency; or (3) in an individual case based on ''humanitarian or national interest reasons.''

To comply with IRTPA, DHS and DOS plan to amend to their respective regulations. Prior to promulgating such regulations, DHS and DOS, through this advance notice of proposed rulemaking (ANPRM), are soliciting comments from the public on the implementation of section 7209. Comments received by DHS and DOS on the ANPRM will be addressed in the future rulemaking actions that promulgate any regulations necessary to implement the requirements of IRTPA.

The Secretary of Homeland Security, in consultation with the Secretary of State, must determine what documents, other than a valid passport, are acceptable under section 7209 because they are ''sufficient to denote identity and citizenship.'' At the conclusion of this public rulemaking process, a notice setting forth the acceptable documents will be published in the **Federal Register**.

Plan for Two Stage Implementation of IRTPA Requirements

DHS and DOS envision implementing the new requirements in the following two stages to ensure that the transition is orderly, to provide affected persons with adequate notice to obtain necessary documents, to designate the alternate documents that will satisfy the requirements, and to ensure that adequate resources are available to issue additional passports or other authorized documents.

a. *Air and Sea Crossings:* Beginning December 31, 2006, all individuals traveling to the United States by air or sea will be asked to present a valid passport or other document, or combination of documents that have been deemed by the Secretary of Homeland Security to be sufficient to establish identity and citizenship. A valid passport will satisfy this requirement and other documents will be considered as possible alternatives to passports in advance of this implementation date. DHS and DOS anticipate soliciting comments through a notice of proposed rulemaking in order to fully consider possible alternatives to passports. This rulemaking process will take place sufficiently in advance of the implementation date for this phase of the program.

b. *Land Crossings:* Beginning December 31, 2007, all individuals arriving at United States land border crossings will have to present either a valid passport or another document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to establish identity and citizenship. We expect that BCCs and registered traveler programs such as SENTRI, NEXUS, and FAST will be accepted. DHS and DOS also anticipate soliciting comments on the implementation of this phase of the program well prior to December 31, 2007 through a notice of proposed rulemaking.

Persons traveling during the implementation of IRTPA should plan to depart from the United States with documents sufficient to meet any new requirements that will be in place when they return.

Rulemaking To Establish Document Requirements Under IRTPA

While a valid passport will always satisfy IRTPA, DHS is currently considering what other documents may be deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship. Based on the section 7209 requirement that the Secretaries of Homeland Security and State shall seek to expedite the travel of frequent travelers and make readily available a registered traveler program, DHS and DOS expect that NEXUS cards, SENTRI cards, BCCs, and FAST driver identification cards may be accepted in lieu of a passport.

Public Participation in Rulemaking Process

The new requirements set forth by IRTPA will result in changes to the types of documents that United States citizens and certain Western Hemisphere nonimmigrant aliens must have when traveling from countries in the Western Hemisphere to the United States. The public is invited to comment specifically on this aspect of the implementation plan in order to assist the Secretary of Homeland Security, in consultation with the Secretary of State, in making a final determination on what documents will be accepted to satisfy section 7209 of IRTPA.

Interested persons are invited to participate generally in this rulemaking process by submitting written data, views, or arguments on all aspects of this advance notice of proposed rulemaking. See **ADDRESSES** above for information on how to submit comments. In addition, public hearings may be held at strategic locations to provide an open forum pertaining to the proposed changes.

Comments that will provide the most assistance to DHS in this rulemaking include, but are not limited to:

a. The types of documents denoting identity and citizenship that should be acceptable as alternatives to a passport under section 7209 of IRTPA;

b. The economic impact (both long-term and short-term, quantifiable and qualitative) of the implementation of section 7209 of IRTPA, including potential impacts on State, local, and tribal governments of the United States; potential impacts on cross-border trade along United States-Canada and United States-Mexico borders; potential impacts on travel, travelers and the travel industry; and potential impacts on small businesses;

c. The monetary and other costs anticipated to be incurred by United States citizens and others as a result of the new document requirements such as the costs in time and money that an individual may incur to obtain a passport or other document(s) determined to be sufficient. These costs may or may not be quantifiable and may include actual monetary outlays, transitional costs incurred to obtain alternative documents, and the costs that will be incurred in connection with delays at the border;

d. The benefits of this rulemaking;

e. Any alternative methods of complying with the legislation; and

f. The proposed stages for implementation of the requirements of section 7209 of IRTPA.

Dated: August 26, 2005.

Michael Chertoff,

Secretary of Homeland Security, Department of Homeland Security.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–17533 Filed 8–31–05; 8:45 am]

BILLING CODE 4820–02–P

cases of unforeseen emergency pursuant to section 212(d)(4)(A) of the INA, 8 U.S.C. 1182(d)(4)(A), and pursuant to section 212(d)(4)(C) of the INA, 8 U.S.C. 1182(d)(4)(C), for persons transiting the United States.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22256; Directorate Identifier 2005–NM–113–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model EMB–135 airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This proposed AD would require modification of the upper frame of the firewall for the auxiliary power unit (APU). This proposed AD results from the discovery of a hole in the upper frame of the firewall for the APU. We are proposing this AD to prevent smoke from entering the passenger cabin in the event of a fire in the APU compartment.

DATES: We must receive comments on this proposed AD by October 3, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''FAA–2005–22256; Directorate Identifier 2005–NM–113–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The DAC advises that, during the manufacturing process of the above airplanes, a hole in the auxiliary power unit (APU) firewall was left open. This condition, if not corrected, could result in smoke entering the passenger cabin in the event of a fire in the APU compartment.

Relevant Service Information

EMBRAER has issued Service Bulletins 145LEG–53–0020 (for Model EMB–135BJ airplanes) and 145–53–0057 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes), both dated November 30, 2004. The service bulletins describe procedures for modifying the APU firewall upper frame to ensure that there are no holes. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2005–04–03, dated April 30, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Differences Between Proposed AD and Foreign AD

Brazilian airworthiness directive 2005–04–03, dated April 30, 2005, is applicable to ''all EMBRAER Model EMB–145( ) and EMB–135( ) aircraft models in operation.'' However, this does not agree with EMBRAER Service Bulletins 145LEG–53–0020 and 145–53–0057, which state that only certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes are affected and identify the affected airplanes by serial number. This proposed AD would be applicable only to the airplanes identified in the service bulletins.

Brazilian airworthiness directive 2005–04–03 specifies modifying the

APU firewall upper frame, part number (P/N) 145–51249–001. However, the service bulletins specify that the APU firewall upper frame may have P/N 145–51249–001 or 120–10731–001. APU firewall upper frames having either part number are subject to the identified unsafe condition. Therefore, this proposed AD would require modifying the APU firewall upper frame, P/N 145–51249–001 or 120–10731–001.

These differences have been coordinated with the DAC.

Costs of Compliance

This proposed AD would affect about 620 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $40,300, or $65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–22256; Directorate Identifier 2005–NM–113–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 3, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, as identified in EMBRAER Service Bulletin 145LEG–53–0020, dated November 30, 2004; and Model EMB–135ER, –135KE, –135KL, and –135LR airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, as identified in EMBRAER Service Bulletin 145–53–0057, dated November 30, 2004; certificated in any category.

Unsafe Condition

(d) This AD results from the discovery of a hole in the upper frame of the firewall for the auxiliary power unit (APU). We are issuing this AD to prevent smoke from entering the passenger cabin in the event of a fire in the APU compartment.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 2,500 flight hours or 365 days after the effective date of this AD, whichever occurs later, modify the APU firewall upper frame, part number 145–51249–001 or 120–10731–001, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–53–0020 (for Model EMB–135BJ airplanes); or Service Bulletin 145–53–0057 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes); both dated November 30, 2004; as applicable.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) Brazilian airworthiness directive 2005–04–03, dated April 30, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on August 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–17403 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22255; Directorate Identifier 2005–NM–106–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Saab Model SAAB 2000 airplanes. This proposed AD would require modifying the manual feather-and-unfeather system for the propellers to make the design of the system more robust. This proposed AD results from reports of in-flight engine shutdown caused by uncommanded operation of the feather pump of the propeller. We are proposing this AD to prevent uncommanded feathering of the propeller, which could result in the shutdown of an engine during flight and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 3, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22255; Directorate Identifier 2005–NM–106–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Luftfartsstyrelsen (LFS), which is the airworthiness authority for Sweden, notified us that an unsafe condition may exist on certain Saab Model SAAB 2000 airplanes. The LFS has received reports of in-flight engine shutdown due to uncommanded operation of the feather pump of the propeller, which caused the propeller to feather. The uncommanded activation of the feather pump has been attributed to an uncommanded operation of the remote control circuit breaker (RCCB) within the manual feather-and-unfeather system. This condition, if not corrected, could result in the shutdown of an engine during flight and consequent reduced controllability of the airplane.

Relevant Service Information

Saab has issued Service Bulletin 2000–61–006, Revision 01, dated February 17, 2005. The service bulletin describes procedures for modifying the manual feather-and-unfeather system for the propellers to make the design of the system more robust. The modification involves replacing the RCCBs with relays, installing new wiring, and making associated structural modifications to the left and right wing fairings. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The LFS mandated the service information and issued Swedish airworthiness directive 1–198, dated February 14, 2005, to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFS has kept the FAA informed of the situation described above. We have examined the LFS's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 3 airplanes of U.S. registry. The proposed actions would take about 50 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $13,571 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $50,463, or $16,821 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Saab Aircraft AB: Docket No. FAA–2005–22255; Directorate Identifier 2005–NM–106–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 3, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to SAAB Model SAAB 2000 airplanes, certificated in any category, serial numbers –004 through –063 inclusive.

Unsafe Condition

(d) This AD results from reports of in-flight engine shutdown caused by uncommanded operation of the feather pump of the propeller. We are issuing this AD to prevent uncommanded feathering of the propeller, which could result in the shutdown of an engine during flight and consequent reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 12 months after the effective date of this AD, modify the manual feather-and-unfeather system of the propellers by doing all actions specified in the Accomplishment Instructions of Saab Service Bulletin 2000–61–006, Revision 01, dated February 17, 2005.

Actions Accomplished Previously

(g) A modification accomplished before the effective date of this AD in accordance with Saab Service Bulletin 2000–61–006, dated December 20, 2004, is acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) Swedish airworthiness directive 1–198, dated February 14, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on August 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–17404 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18648; Directorate Identifier 2004–NE–26–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that was issued for General Electric Company (GE) CF34–3A1 and –3B1 series turbofan engines with certain part numbers (P/Ns) and serial numbers (SNs) of stage 5 low pressure turbine (LPT) disks and stage 6 LPT disks. These engines are installed in Bombardier Canadair CL600–2B19 Regional Jet (RJ) airplanes. This proposed AD would add SNs to the affected disk population for RJ airplanes. This proposed AD would also add GE CF34–1 and –3 series turbofan engines with certain P/Ns and SNs of stage 5 LPT disks and stage 6 LPT disks, to the applicability section. These engines are installed in Bombardier Canadair models CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A), (CL–601–3R), and (CL–604) Business Jet (BJ) airplanes. This proposed AD would require initial and repetitive visual and eddy current inspections (ECI) of the affected disk population. This proposed AD would also allow replacement of those disks as optional terminating action to the repetitive inspections. Also, this proposed AD would require eventual replacement of the affected disks as terminating action to the repetitive inspections. This proposed AD results from the discovery of additional suspect stage 5 LPT disks and stage 6 LPT disks. These disks could fail due to low-cycle fatigue cracking that may start at the site of an electrical arc-out on the disk. We are proposing this AD to prevent low-cycle-fatigue (LCF) failure of stage 5 LPT disks and stage 6 LPT disks, which could lead to uncontained engine failure.

DATES: We must receive any comments on this proposed AD by October 31, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact GE Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594–6323; fax (781) 594–0600, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tara Fitzgerald, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–

2004–18648; Directorate Identifier 2004–NE–26–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Docket Management System (DMS) Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On August 9, 2004, the FAA issued AD 2004–15–03R1, Amendment 39–13773 (69 FR 50299, August 16, 2004). That AD requires initial and repetitive visual inspections and ECIs of certain SNs of stage 5 LPT disks, P/N 6078T92P01, and certain SNs of stage 6 LPT disks, P/N 6078T89P01, installed in GE CF34–3A1 and –3B1 series turbofan engines that power certain Bombardier Canadair RJ airplanes. That AD also allows replacement of those SN disks as an optional terminating action to the repetitive inspections. Also, that AD requires replacement of certain stage 5 and stage 6 LPT disks. That AD was the result of an LCF failure of a stage 5 LPT disk that occurred during factory testing. GE performed a metallurgical evaluation of the disk. The evaluation showed that the origin of the LCF failure was a disk crack caused by inadvertent contact with electrochemical etch probes. These probes were used to match-mark components during engine assembly. GE's evaluation concluded that the probe contact caused damage known as electrical arc-out. Electrical arc-out damage can lead to crack initiation and subsequent LCF failure of the disk. That AD also resulted from the discovery that an incorrect part number for stage 6 LPT disks was published in the existing AD and recognition of the need to allow credit for actions completed per previous releases of GE Alert Service Bulletin (ASB) No. CF34–AL S/B 72–A0173. That electrical arc-out damage condition, if not corrected, could result in LCF failure of stage 5 LPT disks and stage 6 LPT disks, and lead to uncontained engine failure.

Actions Since AD 2004–15–03R1 Was Issued

Since we issued AD 2004–15–03R1, GE identified additional suspect stage 5 LPT disks, P/Ns 4922T16P01, 5024T53P01, 5024T53P02, and 6078T92P01, and stage 6 LPT disks, P/Ns 4922T17P01, 5023T45P03, 5023T45P04, and 6078T89P01, that might have the same arc-out indications. These disks are installed in GE CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 series turbofan engines that power Bombardier Canadair BJ and RJ airplanes. GE has issued ASBs to address these additional suspect disks.

Relevant Service Information

We have reviewed and approved the technical contents of GE ASB No. CF34–AL S/B 72–A0173, Revision 05, dated May 24, 2005, and GE ASB No. CF34–BJ S/B 72–A0148, Revision 02, dated May 24, 2005. These SBs identify the suspect disks by serial number, and describe procedures for initial and repetitive visual inspections and ECIs and eventual replacement of those disks.

Differences Between the Proposed AD and the Manufacturer's Service Information

GE ASB No. CF34–AL S/B 72–A0173, Revision 05, dated May 24, 2005, and GE ASB No. CF34–BJ S/B 72–A0148, Revision 02, dated May 24, 2005, require visually inspecting for electrical arc out indications around the match marks on stage 3 disk arms and stage 4 disk arms. This proposed AD would not mandate these inspections, as the stage 3 disks and stage 4 disks are not part of the suspect population.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require initial and repetitive visual inspections and ECIs of suspect disks and eventual replacement of those disks. The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

There are about 973 GE CF34–3A1 and –3B1 series turbofan engines installed in Bombardier Canadair RJ airplanes in the worldwide fleet and 683 of those engines are installed on airplanes of U.S. registry. We estimate that 355 of those engines would be affected by this proposed AD. There are about 970 CF34–1A, –3A, –3A1, –3A2, and –3B series turbofan engines installed in Bombardier Canadair BJ airplanes in the worldwide fleet and 690 of those engines are installed on airplanes of U.S. registry. We estimate that 249 of those engines would be affected by this proposed AD. We also estimate that it would take about 70 work hours per engine to perform the proposed disk inspections when the LPT module is exposed in the shop, and about 94 work hours per engine to perform the proposed disk inspections when the LPT module is forced off-wing. We also estimate that the average labor rate is $65 per work hour. Prorated stage 5 LPT disks would cost about $42,650 (RJ), and $71,083 (BJ) per engine and prorated stage 6 LPT disks would cost about $30,110 (RJ) and $50,183 (BJ) per engine. We also estimate that about 24 stage 5 LPT disks and about 24 stage 6 LPT disks would be found with the arc-out condition and require replacement. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $14,409,772.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 13773 (69 FR 50299, August 16, 2004) and by adding a new airworthiness directive, Amendment 39–XXXXX, to read as follows:

General Electric Company: Docket No. FAA–2004–18648; Directorate Identifier 2004–NE–26–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by October 31, 2005.

Affected ADs

(b) This AD supersedes AD 2004–15–03R1, Amendment 39–13773.

Applicability

(c) This AD applies to the following two groups of engine models:

(1) General Electric Company (GE) CF34–3A1 and –3B1 series turbofan engines with stage 5 low pressure turbine (LPT) disks, part number (P/N) 6078T92P01 or stage 6 LPT disks P/N 6078T89P01, or both, with serial numbers (SNs) listed in Figure 3 or Figure 4 of GE Alert Service Bulletin (ASB) No. CF34–AL S/B 72–A0173, Revision 05, dated May 24, 2005. These engines are installed on Bombardier Canadair CL600–2B19 Regional Jet (RJ) airplanes.

(2) GE CF34–1A, –3A, –3A1, –3A2, and –3B series turbofan engines with stage 5 LPT disks P/N 4922T16P01, 5024T53P01, 5024T53P02, or 6078T92P01 or stage 6 LPT disks P/Ns 4922T17P01, 5023T45P03, 5023T45P04, or 6078T89P01, or both, with SNs listed in Figure 3 or Figure 4 of GE ASB No. CF34–BJ S/B 72–A0148, Revision 02, dated May 24, 2005. These engines are installed on Bombardier Canadair Models CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A), (CL–601–3R), and (CL–604) Business Jet (BJ) airplanes.

Unsafe Condition

(d) This AD results from the discovery of an additional population of suspect stage 5 LPT disks and stage 6 LPT disks that could fail due to low-cycle fatigue cracking that may start at the site of an electrical arc-out on the disk.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Inspection or Replacement

(f) Using the compliance schedule in Table 1 of this AD, do the following:

(1) For engines installed in Bombardier Canadair RJ airplanes, if a stage 5 LPT disk or stage 6 LPT disk listed in Figure 3 of GE ASB No. CF34–AL S/B 72–A0173, Revision 05, dated May 24, 2005 or listed in any previous issue of ASB No. CF34–AL S/B 72–A0173 did not complete a visual inspection and eddy current inspection (ECI) using paragraphs 3.C.(1) through 3.D.(2) and paragraphs 3.E. through 3.E.(6) of the Accomplishment Instructions of that SB before June 1, 2005, then replace that disk at the next piece-part exposure.

TABLE 1.—COMPLIANCE SCHEDULE

On the effective date of this AD, if the disk has:	Then perform the actions defined in paragraph (f) of this AD at next piece-part exposure, not to exceed the accumulation of:
(i) 14,750 or more cycles-since-new (CSN) and has not been fluorescent penetrant inspected (FPI) at an earlier piece-part exposure.	An additional 250 cycles-in-service (CIS) after the effective date of this AD
(ii) 14,750 or more CSN and has been FPI at an earlier piece-part exposure..	An additional 500 CIS after the effective date of this AD
(iii) 14,500 or more CSN but fewer than 14,750 CSN	An additional 500 CIS after the effective date of this AD.
(iv) 14,250 or more CSN but fewer than 14,500 CSN	An additional 750 CIS after the effective date of this AD.
(v) 13,000 or more CSN but fewer than 14,250 CSN	An additional 1,000 CIS after the effective date of this AD.
(vi) 2,500 or more CSN but fewer than 13,000 CSN	An additional 4,000 CIS after the effective date of this AD, or 14,000 CSN, whichever comes first.
(vii) Fewer than 2,500 cycles-since-new (CSN)	6,500 CSN.

(2) For engines installed in Bombardier Canadair BJ airplanes, perform an initial visual inspection and ECI of stage 5 LPT disks and stage 6 LPT disks listed in Figure 3 of GE ASB No. CF34–BJ S/B 72–A0148, Revision 02, dated May 24, 2005, before January 1, 2010. Use paragraphs 3.C.(1) through 3.D.(2) and paragraphs 3.E. through 3.E.(6) of Accomplishment Instructions of GE ASB No. CF34–BJ S/B 72–A0148, Revision 02, dated May 24, 2005 to do the inspections.

Repetitive Inspections

(g) For engines installed in Bombardier Canadair RJ airplanes with stage 5 LPT disks and stage 6 LPT disks listed in Figure 3 of GE ASB No. CF34–AL S/B 72–A0173, Revision 05, dated May 24, 2005, that were initially visually inspected and ECI'ed before June 1, 2005, do the following:

(1) Perform repetitive visual inspections and ECIs within every 3,100 cycles-since-last-inspection (CSLI), until the life limit of the disk is reached.

(2) Use paragraphs 3.C.(1) through 3.D.(2) and paragraphs 3.E. through 3.E.(6) of Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0173, Revision 05, dated May 24, 2005 to do the inspections.

(h) For engines installed in Bombardier Canadair BJ airplanes, with stage 5 LPT disks and stage 6 LPT disks initially inspected as specified in paragraph (f)(2) of this AD, do the following:

(1) Perform repetitive visual inspections and ECIs within every 3,100

CSLI, until the life limit of the disk is reached.

(2) Use paragraphs 3.C.(1) through 3.D.(2) and paragraphs 3.E. through 3.E.(6) of Accomplishment Instructions of GE ASB No. CF34–BJ S/B 72–A0148, Revision 02, dated May 24, 2005, to do the inspections.

Disks That Pass Inspection

(i) Reinstall disks that pass the inspections in paragraphs (f), (g), and (h) of this AD into the same LPT module from which they were removed.

LPT Stage 5 and Stage 6 Disk Removal

(j) Remove any disk from service if there is an arc-out found on that disk.

(k) At the next piece-part exposure for engines installed in Bombardier Canadair RJ airplanes, remove from service stage 5 LPT disks and stage 6 LPT disks listed in Figure 4 of GE ASB No. CF34–AL S/B 72–A0173, Revision 05, dated May 24, 2005.

(l) At the next piece-part exposure for engines installed in Bombardier Canadair BJ

airplanes, remove from service stage 5 LPT disks and stage 6 LPT disks listed in Figure 4 of GE ASB No. CF34–BJ S/B 72–A0148 Revision 02, dated May 24, 2005.

Optional Terminating Action

(m) Replacement of an affected stage 5 LPT disk or affected stage 6 LPT disk, with a disk not listed in Figure 3 or Figure 4 of GE ASB No. CF34–AL S/B 72–A0173 Revision 05, dated May 24, 2005 or not listed in Figure 3 or Figure 4 of GE ASB No. CF34–BJ S/B 72–A0148, Revision 02, dated May 24, 2005 is terminating action to the repetitive inspections and removals required by this AD for that disk.

Terminating Action

(n) As terminating action to the repetitive inspections and removals in this AD, replace all disks by January 1, 2013 that are listed in Figure 3 and Figure 4 of GE ASB No. CF34–AL S/B 72–A0173, Revision 05, dated May 24, 2005, and that are listed in Figure 3 and Figure 4 of GE ASB No. CF34-BJ 72–A0148, Revision 02, dated May 24, 2005.

Actions Completed Per Previous Releases of Alert Service Bulletins

(o) Actions completed before the effective date of this AD using GE ASB No. CF34–AL S/B 72–A0173, dated April 2, 2004; or Revision 01, dated May 20, 2004; or Revision 02, dated June 22, 2004; or Revision 03, dated July 20, 2004; or Revision 04, dated February 7, 2005; or GE ASB No. CF34–BJ S/B 72–A0148, dated September 2, 2004; or Revision 01, dated March 10, 2005, are considered acceptable for compliance with the corresponding action in this AD.

Serviceable LPT Disk Definition

(p) For the purpose of this AD, a serviceable LPT disk is a disk not listed in Figure 3 or Figure 4 of GE ASB No. CF34–AL S/B 72–A0173 Revision 05, dated May 24, 2005, or Figure 3 or Figure 4 of GE ASB No. CF34–BJ 72–A0148, Revision 02, dated May 24, 2005.

Piece-Part Exposure Definitions

(q) For the purpose of this AD, the definition of piece part exposure for the stage 5 LPT disk is when the disk is separated from the forward and aft bolted joints.

(r) For the purpose of this AD, the definition of piece part exposure for the stage 6 LPT disk is when the disk is separated from the forward bolted joint.

Replacement Engine or Replacement LPT Module Definition

(s) For the purpose of this AD, the definition of a replacement engine or replacement LPT module is an engine or LPT module that does not have installed any of the suspect disks listed in Figure 3 or Figure 4 of GE ASB No. CF34–AL S/B 72–A0173 Revision 05, dated May 24, 2005, or Figure 3 or Figure 4 of GE ASB No. CF34–BJ 72–A0148, Revision 02, dated May 24, 2005.

Alternative Methods of Compliance

(t) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(u) GE ASB No. CF34–AL S/B 72–A0178 and ASB No. CF34–BJ S/B 72–A0152 contain the information necessary to identify and inspect the suspect disks that are the subject of this AD.

Issued in Burlington, Massachusetts, on August 26, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–17400 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22254; Directorate Identifier 2005–NM–001–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; McDonnell Douglas Model MD–88 Airplanes; McDonnell Douglas Model MD–90–30 Airplanes; and McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas transport category airplanes. This proposed AD would require an inspection to determine the part number of the upper and lower stop pad support fittings of all the lower cargo doors, repetitive inspections of all early configuration stop pad support fittings, and corrective action if necessary. This proposed AD would also provide an optional terminating action for the repetitive inspections. This proposed AD is prompted by a report of cracks found in the area of the upper and lower stop pad support fittings of the cargo door pan on numerous airplanes. We are proposing this AD to prevent cracks in the cargo door pan, which could result in the inability to fully pressurize an airplane and possible rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by October 17, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–22254; the directorate identifier for this docket is 2005–NM–001–AD.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22254; Directorate Identifier 2005–NM–001–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal

information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that an operator found cracks in the area of the upper and lower stop pad support fittings of the cargo door pan, on numerous McDonnell Douglas Model DC–9 airplanes. These airplanes had accumulated between 23,944 and 32,735 total flight hours (and between 23,626 and 30,598 total flight cycles, respectively). We have also been notified that these early configuration stop pad support fittings could have been installed on the lower cargo doors of Model MD–90–30 and Model 717–200 airplanes during airplane production. Early configuration stop pad support fittings could fail and cause cracks along the top and bottom of the cargo door pan. This condition, if not corrected, could result in the inability to fully pressurize an airplane and possible rapid decompression of the airplane.

Other Related Rulemaking

On May 8, 1996, we issued AD 96–10–11, amendment 39–9618 (61 FR 24675, May 16, 1996), applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes. Paragraph (b) of that AD requires initial and repetitive inspections to detect cracks in several areas in accordance with the DC–9/MD–80 Aging Aircraft Service Action Requirements Document, McDonnell Douglas Report No. MDC K1572, Revision B, dated January 15, 1993 (hereafter referred to as SARD, Revision B). SARD, Revision B, refers to several McDonnell Douglas service bulletins as additional sources of service information for accomplishing those various inspections.

In particular, SARD, Revision B, refers to McDonnell Douglas DC–9 Service Bulletin 52–89 (for Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes), Revision 5, dated February 26, 1991, for inspecting the forward and aft lower cargo doors to detect cracks. Those inspections are identical to the repetitive inspections that would be required by this proposed AD, in accordance with Boeing Service Bulletin DC9–52–189, Revision 01, dated March 20, 2003. Therefore, accomplishing the repetitive inspections, which would be required by this proposed AD, terminates the repetitive inspections of the forward and aft lower cargo doors required by paragraph (b) of AD 96–10–11.

McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5; and Revision 6, dated January 11, 1993; also describe procedures for doing a preventative modification. The preventative modification includes installing doublers, fittings, webs, angles, clips, and other structural parts in the forward and aft lower cargo doors. If early configuration stop pad support fittings are installed on a lower cargo door, this proposed AD would reinstate inspections of the lower cargo doors at the same inspection interval, regardless of whether the preventative modification of McDonnell Douglas DC–9 Service Bulletin DC9–52–89, Revision 5, or Revision 6, has been previously accomplished.

Relevant Service Information

We have reviewed the following Boeing Service Bulletins:

- DC9–52–189, Revision 01, excluding Appendix A, dated March 20, 2003, for McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, DC–9–50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes;
- MD90–52–014, dated December 14, 2004, for McDonnell Douglas Model MD–90–30 airplanes; and
- 717–52–0007, dated December 14, 2004, for McDonnell Douglas Model 717–200 airplanes.

The service bulletins describe the following procedures:

- For certain airplanes, inspecting to determine the part number of the upper and lower stop pad support fittings of lower cargo doors.
- If any early configuration stop pad support fitting is installed on a lower cargo door, doing either repetitive visual or repetitive eddy current inspections for cracks in the lower cargo door.

For Boeing Service Bulletins MD90–52–014 and 717–52–0007, the corrective action includes contacting the manufacturer for repair instructions if any crack is found in the door jamb or jamb structure of a lower cargo door.

For Boeing Service Bulletin DC9–52–189, the corrective action includes the following:

- Repairing any crack found in the door outer skin.
- Replacing cracked parts, if cracks are found in the two adjacent beam end fittings; or if cracks are found in any beam end fitting with the intercostal web, angle, or tee fitting for any cracked upper or lower stop pad support fitting.
- Repetitively inspecting for crack growth and additional cracks, if cracks are found inside any pressure seal other than the outer pan; if multiple cracks totaling 10 inches or less are found inside the pressure seal of the outer pan; if no more than two cracks, each 1.25 inches or less in length, are found outside the pressure seal of the outer pan; or if only one crack 2.0 inches or less in length is found outside the pressure seal of the outer pan.
- Repairing any cracked outer pan, if multiple cracks totaling more than 10 inches are found inside the pressure seal of the outer pan; if more than 2 cracks, or any crack longer than 2.5 inches or two cracks with either one longer than 1.75 inches, are found outside the pressure seal of the outer pan; if no more than 2 cracks, each longer than 1.25 inches in length but less than 1.75 inches, are found outside the pressure seal of the outer pan; or if no more than one crack, longer than 2.0 inches in length but less than 2.5 inches, is found in the outer pressure boundary of the outer pan.

The service bulletins also describe the following procedures, which would end the applicable repetitive visual or repetitive eddy current inspections:

- Replacing all early configuration stop pad support fittings installed on any lower cargo door with new configuration or new stop pad support fittings.
- Reidentifying the applicable lower cargo door after replacement of the early configuration stop pad support fittings.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Bulletins.''

Differences Between the Proposed AD and Service Bulletins

The service bulletins specify that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization whom we have authorized to make those findings.

For airplanes identified as Group 1 in Boeing Service Bulletin DC9–52–189, Revision 01, the service bulletin recommends doing the initial inspection of the lower cargo doors for cracks ''* * * within the next 300 flight hours on airplanes having in excess of 8,000 flight hours, if not currently inspected * * *.'' This proposed AD, however, would require a compliance time of within 300 flight hours after the effective date of this AD, since all Group 1 airplanes already have exceeded the 8,000 total-flight-hour threshold.

The service bulletins recommend not to remove and reinstall a lower cargo door on another airplane after that lower cargo door has been inspected in accordance with the applicable service bulletin. This proposed AD, however, does not prohibit reinstallation of a lower cargo door on another airplane. We have coordinated this difference with the manufacturer.

Clarification of Inspection Terminology

''Visually inspecting'' as specified in the service bulletins is referred to as a ''general visual inspection'' in this proposed AD. We have included the definition for a general visual inspection in a note in this proposed AD.

Costs of Compliance

There are about 2,016 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators, at an average labor rate of $65 per hour, to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection to determine part numbers for Group 2, 3, and 4 airplanes identified in Boeing Service Bulletin DC9–52–189; Model MD–90–30 airplanes; and Model 717–200 airplanes.	1	None	$65	1,218	$79,170
Inspection for cracks for Group 1 airplanes identified in Boeing Service Bulletin DC9–52–189, per inspection cycle.	4	None	[1]$260	368	[1]$95,680

[1] Per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2005–22254; Directorate Identifier 2005–NM–001–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by October 17, 2005.

Affected ADs

(b) Accomplishing paragraph (g) or (h), as applicable, of this AD terminates certain requirements of AD 96–10–11, amendment

39–9618, as specified in McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5, dated February 26, 1991.

Applicability

(c) This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) All McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes; and

(2) Model 717–200 airplanes, as identified in Boeing Service Bulletin 717–52–0007, dated December 14, 2004.

Unsafe Condition

(d) This AD was prompted by a report of cracks found in the area of the upper and lower stop pad support fittings of the cargo door pan on numerous airplanes. We are issuing this AD to prevent cracks in the cargo door pan, which could result in the inability to fully pressurize an airplane and possible rapid decompression of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the following service bulletins, as applicable:

(1) For Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes; Model DC–9–81 (MD–81) airplanes; Model DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes: Boeing Service Bulletin DC9–52–189, Revision 01, excluding Appendix A, dated March 20, 2003;

(2) For Model MD–90–30 airplanes: Boeing Service Bulletin MD90–52–014, dated December 14, 2004; and

(3) For Model 717–200 airplanes: Boeing Service Bulletin 717–52–0007, dated December 14, 2004.

Determine Part Numbers (P/Ns) and Inspect if Necessary

(g) For airplanes identified in Table 1 of this AD: At the compliance time specified in Table 1 of this AD, inspect to determine the part number of the upper and lower stop pad support fittings of the lower cargo doors, in accordance with the Accomplishment Instructions of the service bulletin, as applicable. If new configuration or new upper and lower stop pad support fittings, as identified in the applicable service bulletin, are found installed on all lower cargo doors, then no further action is required by this paragraph. If any early configuration stop pad support fitting is found installed on any lower cargo door, within 300 flight hours, do the inspection specified in either paragraph (g)(1) or (g)(2) of this AD, in accordance with the Accomplishment Instructions of the service bulletin, until the replacement specified in paragraph (k) of this AD is accomplished.

(1) Do a general visual inspection for cracks in any lower cargo door having an early configuration stop pad support fitting. Repeat the general visual inspection thereafter at intervals not to exceed 1,700 flight hours.

(2) Do an eddy current inspection for cracks in any lower cargo door having an early configuration stop pad support fitting. Repeat the eddy current inspection thereafter at intervals not to exceed 3,900 flight hours.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

TABLE 1.—COMPLIANCE TIMES TO DETERMINE P/N

Applicable airplanes	Compliance time
Airplanes identified as Group 2, 3, and 4 in paragraph 1.D. of Boeing Service Bulletin DC9–52–189, Revision 01, dated March 20, 2003.	Within 300 flight hours after the effective date of this AD.
Model MD–90–30 airplanes and Model 717–200 airplanes	Before the accumulation of 25,000 total flight hours, or within 3,900 flight hours after the effective date of this AD, whichever is later.

Repetitive Inspections for Certain Airplanes

(h) For airplanes identified as Group 1 in paragraph 1.D. of Boeing Service Bulletin DC9–52–189, Revision 01, dated March 20, 2003: At the applicable compliance time specified in Table 2 of this AD, do the inspection specified in either paragraph (g)(1) or (g)(2) of this AD, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspection thereafter at the interval specified in paragraph (g)(1) or (g)(2), as applicable, until the replacement specified in paragraph (k) of this AD is accomplished. Inspections also may be done in accordance with the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5, dated February 26, 1991; or Revision 6, dated January 11, 1993.

TABLE 2.—COMPLIANCE TIMES FOR INSPECTION

For airplanes that have—	Compliance time
Been inspected before the effective date of this AD in accordance with paragraph (b) of AD 96–10–11 as specified in Phase I of the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5, dated February 26, 1991, or Revision 6, dated January 11, 1993.	Within 1,700 flight hours after the last general visual inspection, or within 3,900 flight hours after the last eddy current inspection, as applicable.
Not been inspected before the effective date of this AD in accordance with paragraph (b) of AD 96–10–11 as specified in Phase I of the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5, dated February 26, 1991, or Revision 6, dated January 11, 1993.	Within 300 flight hours after the effective date of this AD.

Corrective Actions for Certain Airplanes

(i) For Model MD–90–30 airplanes and Model 717–200 airplanes: If any crack is found in the door jamb or jamb structure of a lower cargo door during any inspection required by paragraph (g)(1) or (g)(2) of this AD, and the service bulletin specifies contacting Boeing for appropriate action, before further flight, repair the crack using a method in accordance with paragraph (o) of this AD.

Corrective Actions for Certain Other Airplanes

(j) For Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes: If any crack is found during any inspection required by paragraph (g)(1), (g)(2), or (h) of this AD, do the corrective action at the applicable compliance time specified in paragraph 1.E. of the service bulletin, in accordance with the Accomplishment Instructions of the service bulletin, as applicable.

Optional Replacement of Stop Pad Support Fittings

(k) For all airplanes: Replacement of all early configuration stop pad support fittings installed on a lower cargo door with new configuration or new stop pad support fittings, as identified in the applicable service bulletin; and reidentification of the applicable lower cargo door; in accordance with the Accomplishment Instructions of the applicable service bulletin; terminates the repetitive inspections required by paragraphs (g)(1), (g)(2), and (h) of this AD, as applicable, for that lower cargo door only.

Parts Installation

(l) For all airplanes: As of the effective date of this AD, no person may install an early configuration stop pad support fitting having P/N 3925046–1, –501, –505, –507, or –509, or P/N 3926046–1 or –501, on any airplane.

Credit for Previous Service Bulletin

(m) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin DC9–52–189, dated August 10, 2001, are acceptable for compliance with the corresponding requirements of this AD.

Terminating Action for Certain Requirements of AD 96–10–11

(n) For Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes: Accomplishing the replacement specified in paragraph (k) of this AD for the forward and aft lower cargo doors terminates the repetitive inspections of the forward and aft lower cargo doors for cracks required by paragraph (b) of AD 96–10–11 as specified in McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5, dated February 26, 1991.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on August 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–17402 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 2005N–0345]

RIN 0910–AF72

Drug Approvals: Circumstances Under Which an Active Ingredient May Be Simultaneously Marketed in Both a Prescription Drug Product and an Over-the-Counter Drug Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing this advance notice of proposed rulemaking to request comment on whether to initiate a rulemaking to codify its interpretation of section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301, *et seq.*), regarding when an active ingredient may be simultaneously marketed in both a prescription drug product and an over-the-counter (OTC) drug product.

DATES: Submit written or electronic comments by November 1, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0345 and/or RIN number 0910–AF72, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: For further information contact the FDA at 301–827–0002 or by e-mail at *pcomments@fda.gov*. This phone number and this e-mail account have been set-up to address questions relating to this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Since Congress first enacted the Federal Food, Drug, and Cosmetic act (the act) in 1938, there has been a great deal of discussion about when drug products should be sold as prescription drugs as opposed to OTC drugs.

Until 1951, the act did not contain criteria for determining when to limit a drug's approval to prescription use. Consequently, different manufacturers made different decisions about whether to market a drug as prescription or OTC. This resulted in confusion and uncertainty for pharmacists and consumers, and made it difficult for FDA to ensure that the only drugs available OTC were those that were safe for use without the supervision of a licensed medical practitioner.

To eliminate this confusion and uncertainty, and to protect the public health, Congress enacted the Durham-Humphrey Amendments in 1951 (Public Law 82–215, 65 Stat. 648). Congress had two primary objectives in enacting the Amendments: (1) To protect the public from abuses in the sale of potent Rx drugs; and (2) to relieve retail pharmacists and the public from burdensome and unnecessary restrictions on the dispensing of drugs that are safe for use without the supervision of a physician. See S. Rep. No. 946, at 1 (1951), reprinted in 1951 U.S.C.C.A.N. 2454. To this end, the new legislation codified a statutory definition of prescription drug in section 503(b) of the act.

Section 503(b) of the act sets forth the Federal standard used to classify drugs as prescription or OTC, and it describes when and how to switch a drug from prescription to OTC status. Section 503(b)(1) of the act defines a prescription drug as:

(1) A drug intended for use by man which—

(A) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(B) is limited by an approved application under section 505 to use under the professional supervision of a practitioner licensed by law to administer such drug.

The act does not define ''OTC drug,'' but the term has been adopted to refer to any drug that does not meet the definition of prescription drug in section 503(b) of the act.

Given this dichotomy between prescription and OTC drugs, questions have arisen over the years about whether there are any conditions under which an active ingredient may be simultaneously marketed in both a prescription drug product and an OTC drug product. FDA has interpreted the language in 503(b)(1) of the act to allow marketing of the same active ingredient in products that are both prescription and OTC, assuming some meaningful difference exists between the two that makes the prescription product safe only under the supervision of a licensed practitioner. Examples of such drugs include: Meclizine (prescription for vertigo/OTC for nausea with motion sickness); Clotrimazol (prescription for candidiasis/OTC for athlete's foot, ring worm, jock itch); Loperamide (prescription for chronic diarrhea/OTC for acute diarrhea); Nicotine products (prescription for administration through inhalers and nasal sprays/OTC in gums, lozenges and patches); ibuprofren (prescription at 400mg+ for arthritis/OTC at 400mg and below for aches and pains); and H2 blockers (prescription at 300mg+ for ulcers/OTC at 200mg for heartburn). The key distinction in these examples is that there is some meaningful difference between the two products (e.g., indication, strength, route of administration, dosage form) that makes the prescription product safe only under the supervision of a licensed practitioner. To date, FDA has not allowed marketing of the same active ingredient in a prescription product for one population and in an OTC product for a subpopulation.

II. Agency Request for Information

Despite the preceding examples, we recognize that FDA's interpretation of section 503(b) of the act has not been explicitly set forth in any of the regulations that discuss the process by which FDA classifies (or re-classifies) drugs as OTC or prescription. See, e.g., 21 CFR 310.200 and 310.201.

To address this concern, we therefore ask for comments on the following questions:

1.

A. Should FDA initiate a rulemaking to codify its interpretation of section 503(b) of the act regarding when an active ingredient can be simultaneously marketed in both a prescription drug product and an OTC drug product?

B. Is there significant confusion regarding FDA's interpretation of section 503(b) of the act?

C. If so, would a rulemaking on this issue help dispel that confusion?

2.

A. If FDA limited sale of an OTC product to a particular subpopulation, e.g., by making the product available to the subpopulation by prescription only, would FDA be able to enforce such a limitation as a matter of law?

B. If it could, would it be able to do so as practical matter and, if so, how?

3.

A. Assuming it is legal to market the same active ingredient in both a prescription and OTC product, may the different products be legally sold in the same package?

B. If the two products may be lawfully sold in a single package, under what circumstances would it be inappropriate to do so?

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m. Monday through Friday.

Dated: August 26, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–17390 Filed 8–26–05; 4:59 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102144–04]

RIN 1545–BD10

Dual Consolidated Loss Regulations; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 1503(d) of the Internal Revenue Code (Code) regarding dual consolidated losses.

DATES: The public hearing originally scheduled for September 7, 2005, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Tuesday, May 24, 2005 (70 FR 29868) announced that a public hearing was scheduled for September 7, 2005, at 10 a.m., in the IRS Auditorium, Internal Revenue Service

Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 1503(d) of the Internal Revenue Code. The public comment period for these regulations expired on August 17, 2005.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, August 24, 2005, no one has requested to speak. Therefore, the public hearing scheduled for September 7, 2005, is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 05–17377 Filed 8–31–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–107]

RIN 1625–AA08

Special Local Regulations for Marine Events; John H. Kerr Reservoir, Clarksville, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for the ''Clarksville Hydroplane Challenge'', a power boat race to be held on the waters of the John H. Kerr Reservoir adjacent to Clarksville, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the John H. Kerr Reservoir adjacent to Clarksville, Virginia during the power boat race.

DATES: Comments and related material must reach the Coast Guard on or before September 16, 2005.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, fax them to (757) 398–6203, or e-mail them to *DSens@lantd5@uscg.mil.* The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–05–107), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In order to provide notice and an opportunity to comment before issuing an effective rule, we are providing a shorter than normal comment period. Because the event organizer provided the Coast Guard late notice of the event, there is not sufficient time for a full 45-day comment period. We believe that by providing the possibility of facsimile and e-mail submission options, this shorter period will provide the public with sufficient time to comment on this regulation that will only affect a small portion of the waterway for a short period of time.

We further anticipate that if a Final Rule is issued time constraints will require us to provide less than a 30-day period before the rule becomes effective. Immediate action is needed to protect the safety of life at sea from the danger posed by high-speed power boats. For the safety concerns noted, it is in the public interest to have the regulations in effect during the event.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On October 1 and 2, 2005, the Virginia Boat Racing Association will sponsor the ''Clarksville Hydroplane Challenge'', on the waters of the John H. Kerr Reservoir. The event will consist of approximately 60 inboard hydroplanes racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the John H. Kerr Reservoir adjacent to Occoneechee State Park, Clarksville, Virginia and State Route 15 Highway Bridge. The regulated area includes a section of the John H. Kerr Reservoir approximately one half mile long, and bounded in width by each shoreline. This rule will be enforced from 7:30 a.m. to 6:30 p.m. on October 1 and 2, 2005, and will restrict general navigation in the regulated area during the power boat race. The Coast Guard, at its discretion, when practical will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area during the enforcement period. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the

regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of the John H. Kerr Reservoir adjacent to Clarksville, Virginia during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit this section of the John H. Kerr Reservoir during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only a short period, from 7:30 a.m. to 6:30 p.m. on October 1 and 2, 2005. The regulated area will apply to a segment of the reservoir adjacent to State Route 15 Highway Bridge and Occoneechee State Park. Marine traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels will be required to proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 100.35–T05–107 to read as follows:

§ 100.35–T05–107 John H. Kerr Reservoir, Clarksville, Virginia.

(a) *Regulated area.* The regulated area is established for the waters of the John H. Kerr Reservoir, adjacent to the State Route 15 Highway Bridge and Occoneechee State Park, Clarksville, Virginia, from shoreline to shoreline, bounded on the south by a line running northeasterly from a point along the shoreline at latitude 36°37′14″ N, longitude 078°32′46.5″ W, thence to latitude 36°37′39.2,″ N, longitude 078°32′08.8″ W, and bounded on the north by the State Route 15 Highway Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Clarksville Hydroplane Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 7:30 a.m. to 6:30 p.m. on October 1 and 2, 2005.

Dated: August 22, 2005.

S.H. Ratti,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 05–17428 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–104]

RIN 1625–AA08

Special Local Regulations for Marine Events; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the ''Tug-of-War'', a marine event conducted over the waters of Spa Creek between Eastport and Annapolis, Maryland. Special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Spa Creek during the event.

DATES: Comments and related material must reach the Coast Guard on or before October 3, 2005.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket CGD05–05–104, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–05–104, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we

will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Annually, the City of Annapolis sponsors the ''Tug-of-War'', across the waters of Spa Creek between Eastport and Annapolis, Maryland. The event consists of a tug of war between teams on the Eastport side of Spa Creek pulling against teams on the Annapolis side of Spa Creek. The opposing teams will pull a floating rope approximately 1700 feet in length, spanning Spa Creek. A fleet of spectator vessels is anticipated. Due to the need for vessel control while the rope is spanned across Spa Creek, vessel traffic would be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish this permanent rule on specified waters of Spa Creek. The regulated area would include a 400 foot buffer on either side of the rope that spans Spa Creek from shoreline to shoreline. This rule would be enforced annually from 10:30 a.m. to 2:30 p.m. on the first Saturday in November and would restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel could enter or remain in the regulated area. The Coast Guard Patrol Commander could stop the event to allow vessels to transit the regulated area. For 2005 only, the enforcement period of the regulation would be changed from the first Saturday in November to the last Saturday in October.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed permanent rule prevents traffic from transiting a portion of Spa Creek during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will effect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Spa Creek during the event.

This proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a 4-hour period. Vessel traffic will be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety

Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

2. Add § 100.534 to read as follows:

§ 100.534 Tug-of-War; Spa Creek, Annapolis, Maryland.

(a) *Regulated area.* A regulated area is established for the waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58′36.9″ N, longitude 076°29′03.8″ W on the Annapolis shoreline to a position at latitude 38°58′26.4″ N, longitude 076°28′53.7″ W on the Eastport shoreline. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the ''Tug of War'' under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) Unless otherwise directed by the official patrol, operate at a minimum wake speed not to exceed six (6) knots.

(d) *Enforcement period.* This section will be enforced annually from 10:30 a.m. to 2:30 p.m. on the first Saturday in November. In 2005 the section will be enforced on the last Saturday in October instead of the first Saturday in November.

Dated: August 18, 2005.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–17427 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 413, 414, and 426

[CMS–1502–CN]

RIN 0938–AN84

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2006; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects errors in the proposed rule that appeared in the **Federal Register** on August 8, 2005 entitled ''Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2006.''

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

FR Doc. 05–15370, of August 8, 2005, contains the proposed rule to update the physician fee schedule for CY 2006 (70 FR 45764). We identified several errors and are correcting them in the ''Correction of Errors'' section below.

II. Summary of Errors

On page 45769, in the first column, under ''Step 1—Calculation of the SMS Cost Pool for Each Specialty'' in the first bullet, the last sentence inadvertently included the word ''seconds.''

On page 45775, Table 14-PRACTICE EXPENSE PER HOUR FIGURES inadvertently included incorrect practice expense per hour figures.

On page 45779, in the third column, in the second bullet titled ''Supply Item for Percutaneous Vertebroplasty Procedures (CPT Codes 22520 and 22525)'', the second CPT code referenced is incorrect. The reference to CPT code 22525 at the end of the first sentence should also be corrected.

On page 45784, in the middle column, in the third complete paragraph, the GAF for ''Rest of California'' was listed incorrectly twice and in the fourth sentence of this paragraph, ''0.01 percent below'' should read ''equal to.''

On page 45786, in the first column, in the third complete paragraph, the last set of CPT codes were listed incorrectly in the last sentence of this paragraph, ''93617 to 93641'' should read ''93618 to 93641.''

On page 45791, in the third column, in the second complete sentence the references to $2.850 and $1.960 million are incorrect.

On page 45792, the footnote to Table 22 should be deleted; the headings for the second and third columns should be corrected. Also, in the middle column of page 45792, in the last paragraph, in the fifth sentence, $3.107 and $2.137 million are incorrect.

On page 45855, in the first column, in footnote 4, the Web site address should be corrected.

On page 45864, in Table 33, ''Impact of Practice Expense, Malpractice RVUs, Multiple Imaging Discount, and Physician Fee Schedule Update on Total Medicare Allowed Charges by Physician, Practitioner and Supplier Sub-category,'' in the column labeled ''Medicare allowed charges for 2004 ($ in millions),'' incorrect figures were listed for Hematology/Oncology, Infectious Disease, and Rheumatology.

On page 45866, in the discussion labeled ''B. Geographic Practice Cost Indices (GPCI) Payment Localities,'' in the first line of the third column, the GAF for Rest of California was incorrectly referenced as ''1.011.''

In Table 36, ''Impacts on California Payment Localities,'' on page 45867, the 2006 Proposed MP GPCI was incorrectly published as ''0.717'' for Santa Cruz, Sonoma, and Rest of California.

On page 45872, in the middle column in the regulation text under ''§ 411.351 Definitions,'' the second term defined is listed incorrectly as ''Radiation and certain other imaging services.''

On pages 45876 and 45877 in Addendum B, we incorrectly indicated that the practice expense RVUS reflect the fully implemented practice expense RVUs rather than the transitional PE RVUs for 2006; therefore, in the third column of page 45876 and the first column of page 45877, items 6, 7, 9, and 10 need to be corrected. Also, we incorrectly indicated in the third column of page 45876 and the first column on page 45877 that item 9 reflected ''Facility'' totals and item 10 reflected ''Non-facility'' totals.

In Addendum B, on pages 45937 and 45996, the incorrect practice expense RVUs were listed for CPT code 58356 (Endometrial cryoablation) and 96567 (photodynamic tx, skin), respectively. In addition, on page 46004, in Addendum B, we failed to include the PE RVUs for two HCPCS codes, G0375 (Smoke/Tobacco counseling 3–10) and G0376 (Smoke/Tobacco counseling >10).

On page 46007, in Addendum D, ''2006 Georgraphic Practice Cost Indices (GPCI) By Medicare Carrier and Locality,'' the MP GPCI for Santa Cruz, Sonoma, and Rest of California was listed incorrectly as ''0.717.'' In Addendum E, ''Proposed 2006 Geographic Adjustment Factors (GAFs)'', on page 46008, the 2006 GAF for Santa Clara, CA was listed incorrectly and should be corrected to read ''1.265.''

II. Correction of Errors

A. Preamble Corrections

We are making the following corrections to the August 8, 2005 proposed rule.

1. On page 45769, in the first column, under ''Step 1—Calculation of the SMS Cost Pool for Each Specialty,'' in the first bullet, the last sentence inadvertently included the word ''seconds.'' The sentence is corrected to read as follows: ''The PE/HR is divided by 60 to obtain the PE per minute (PE/MIN).''

2. On Page 45775, Table 14—PRACTICE EXPENSE PER HOUR FIGURES inadvertently included incorrect practice expense per hour figures. The practice expenses per hour figures are corrected as follows:

TABLE 14.—PRACTICE EXPENSE PER HOUR FIGURES

Specialty	Clinical staff	Admin. staff	Office expense	Medical supplies	Medical equipment	Other	Total
Radiology	22.8	29.7	18.8	8.8	21.4	35.2	136.7
Cardiology	46.7	41.8	41.3	20.3	14.6	19.6	184.3
Radiation Oncology	39.0	20.4	31.1	3.8	21.7	22.0	138.0
Urology	26.3	39.9	50.7	13.6	10.6	22.1	163.2
Dermatology	38.3	48.5	74.3	14.5	10.4	26.6	212.5
Allergy/Immunology	62.1	53.1	62.1	21.2	5.9	29.3	233.7
Gastroenterology	27.6	36.2	44.3	7.5	5.4	12.2	133.2

3. On page 45779, in the third column, in the second bullet titled ''Supply Item for Percutaneous Vertebroplasty Procedure (CPT Codes 22520 and 22525)'', the second CPT code reference is incorrect. This code is corrected to read ''22521.'' The reference to CPT code 22525 at the end of the first sentence is also corrected to read ''22521.''

4. On Page 45784, in the middle column, in the fourth complete paragraph, the reference to the GAF for ''Rest of California'' was listed incorrectly. The fourth sentence is corrected as follows: ''The Rest of California GAF would be 1.012, a value equal to the 2005 Rest of California GAF.'' In addition, the last sentence of this paragraph is corrected to read as follows: ''The proposed Rest of California GAF of 1.012 fully reflects incorporating the updated data.''

5. On page 45786, in the first column, in the third complete paragraph, the last set of CPT codes listed in the last sentence of this paragraph were incorrect. The last sentence is corrected as follows: ''We agree with the RUC PLI Workgroup recommendation and

propose that the following CPT codes be added to the existing list of codes under the exception: 92975; 92980 to 92998; and 93618 to 93641.''

6. On page 45791, in the third column, in the second complete sentence the references to $2.850 and $1.960 million are incorrect. This sentence is corrected to read as follows: ''For CY 2005, we estimate that total spending, after the deduction of payments for syringes, will reach $246 million for Epogen provided in hospital-based facilities, and $2,850 million for drugs provided in independent facilities ($1,960 million for Epogen and $890 million for other drugs).''

7. On page 45792, make the following corrections to Table 22: the footnote ''* Compared to the $10.00 statutory price.'' is removed as this footnote is only pertinent to table 23; the heading for the second column is corrected to read ''CY 2005 Estimated Drug Payments as a Percentage of Top Ten ESRD Drug Payments (percent),'' and the heading for the third column of the table is corrected to read ''CY 2002 OIG Drug Payments as a Percentage of Top Ten ESRD Drug Payments (percent).'' In the middle column of page 45792, in the third complete paragraph, the fourth sentence is corrected to read as follows ''This procedure resulted in projected expenditures of $268 million for Epogen provided in hospital-based facilities and $3,107 million for drugs provided in independent facilities ($2,137 million for Epogen and $970 million for other drugs).''

8. On page 45855, in the first column in footnote 4, the last sentence of the Web site address is corrected to read as follows: *http://search.ed.com/ed/article?tocid=9062423.*

9. On page 45864, in Table 33, ''Impact of Practice Expense, Malpractice RVUs, Multiple Imaging Discount and Physician Fee Schedule Update on Total Medicare Allowed Charges by Physician, Practitioner and Supplier Sub-category'', in the column labeled ''Medicare allowed charges for 2004 ($ in millions),'' incorrect figures were listed for Hematology/Oncology, Infectious Disease, and Rheumatology. These figures are corrected as follows:

Hematology/Oncology	2,041
Infectious Disease	491
Rheumatology	462

10. On page 45866, in the discussion labeled ''B. Geographic Practice Cost Indices (GPCI) Payment Localities,'' in the first line of the third column, the GAF for Rest of California was incorrectly referenced as ''1.011.'' This is corrected to read ''1.012.''

11. In Table 36, ''Impacts on California Payment Localities'' on page 45867, the 2006 Proposed MP GPCI was published as ''0.717'' for Santa Cruz, Sonoma, and Rest of California. This figure is corrected to read ''0.733'' for these localities.

B. Regulations Text

On page 45872, in the middle column in the regulation text under ''§ 411.351 Definitions,'' the second term defined is listed incorrectly as ''Radiation and certain other imaging services.'' This is corrected to read ''Radiology and certain other imaging services.''

C. Addenda

1. On pages 45876 and 45877, in Addendum B, we incorrectly indicated that the practice expense RVUS reflect the fully implemented PE RVUs rather than the transitional PE RVUs for 2006. We also incorrectly indicated in the third column of page 45876 and the first column of page 45877 that item 9 reflected ''Facility'' totals and item 10 reflected ''Non-facility'' totals. Therefore, items 6, 7, 9, and 10 are corrected to read as follows:

''6. *Non-facility practice expense RVUs.* These are the transitional 2006 resource-based practice expense RVUs for non-facility settings.''

''7. *Facility practice expense RVUs.* These are the transitional 2006 resource-based practice expense RVUs for facility settings.''

''9. *Non-facility total.* This is the sum of the work, the transitional 2006 non-facility practice expense, and malpractice expense RVUs.''

''10. *Facility total.* This is the sum of the work, the transitional 2006 facility practice expense, and malpractice expense RVUs.''

2. In Addendum B, on pages 45937 and 45996, the incorrect PE RVUs were listed for CPT codes 58356 and 96567, respectively. In addition, on page 46004 in Addendum B, we failed to include the PE RVUs for two HCPCS codes, G0375 and G0376. The RVUs for these codes are corrected as follows:

CPT [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
58356	.....	A	Endometrial cryoablation.	6.37	56.84	2.60	0.82	64.03	9.79	010
96567	.....	A	Photodynamic tx, skin.	0.00	2.29	NA	0.04	2.33	NA	XXX
G0375	.....	A	Smoke/Tobacco counseling 3–10.	0.24	0.09	0.09	0.01	0.34	0.34	XXX
G0376	.....	A	Smoke/Tobacco counseling >10.	0.48	0.18	0.17	0.01	0.67	0.66	XXX

[1] CPT codes and descriptions only are copyright 2005 American Medical Association. All rights reserved. Applicable FARS/DFARS apply.
[2] Copyright 2005 American Dental Association. All rights reserved.
[3] +Indicates RVUs are not used for Medicare payment.

3. On page 46007, in Addendum D, ''2006 Geographic Practice Cost Indices (GPCI) By Medicare Carrier and Locality,'' the MP GPCI for Santa Cruz, Sonoma, and Rest of California was listed incorrectly as ''0.717.'' This figure is corrected to read ''0.733'' for these localities.

4. In Addendum E, ''Proposed 2006 Geographic Adjustment Factors (GAFs)'', on page 46008, the 2006 GAF for Santa Clara, CA was listed incorrectly and is corrected to read ''1.265.''

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 25, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–17279 Filed 8–26–05; 9:46 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Yellowstone Cutthroat Trout as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; opening of public comment period on status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the opening of a public comment period for a status review of the Yellowstone cutthroat trout (*Oncorhynchus clarki bouvieri*) in the United States, which has been initiated pursuant to a recent Court order requiring us to prepare a 12-month finding on a petition to list the subspecies as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). This action will allow all interested parties an opportunity to provide information on the status of the subspecies of fish.

DATES: Comments must be submitted on or before October 31, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of the following methods:

1. You may submit written comments and information by mail to Yellowstone Cutthroat Comments, U.S. Fish and Wildlife Service, 780 Creston Hatchery Road, Kalispell, Montana 59901–8239.

2. You may hand-deliver written comments and information to our Creston Fish and Wildlife Center, at the above address, or fax your comments (406) 758–6887.

3. You may send your comments by electronic mail (e-mail) to *fw6_yellowstonecut@fws.gov.* For directions on how to submit electronic filing of comments, by e-mail see the ''Public Comments Solicited'' section. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

All comments and materials received will be available for public inspection, by appointment, during normal business hours at our Kalispell Ecological Services Suboffice at the above address. Further information also is available on the Internet at *http://mountain-prairie.fws.gov/species/fish/yct/index.htm.*

FOR FURTHER INFORMATION CONTACT: Wade Fredenberg at the above address (fax: (406) 758–6887; telephone: (406) 758–6872; e-mail: *wade_fredenberg@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2001, we published a **Federal Register** notice (66 FR 11244) announcing our 90-day finding on an August 14, 1998, petition to list Yellowstone cutthroat trout as threatened or endangered under the Act. We determined that the petition failed to present substantial information indicating that listing this subspecies may be warranted. During the period leading up to this finding, we received written comments from the game and fish departments of the States of Idaho, Montana, Wyoming, Utah, and Nevada, as well as from Yellowstone National Park, several entities of the U.S. Forest Service, and the Shoshone-Bannock tribes of the Fort Hall Indian Reservation. In their letters and attachments, those entities provided important information relevant to the status of Yellowstone cutthroat trout. That information, as well as information supporting the petition, was used in the 90-day finding.

On January 20, 2004, the Center for Biological Diversity and others filed a complaint in the U.S. District Court for the District of Colorado, alleging that the Service had used the wrong procedures and standards to assess the petition as part of the 90-day finding process. On December 17, 2004, the Court ruled in favor of the plaintiffs and ordered the Service to produce a status review and 12-month finding for Yellowstone cutthroat trout. On February 14, 2005, the Court clarified its order and attached a February 14, 2006, due date for the Service to complete the review and finding.

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a 12-month finding whether a petitioned action is (a) not warranted, (b) warranted, or (c) warranted but the immediate proposal of a regulation is precluded by other pending proposals to determine whether other species are threatened or endangered. This finding is based on a status review that is normally initiated by a positive 90-day finding. In this case, the status review is being initiated by court order.

We are opening a 60-day comment period to allow all interested parties an opportunity to provide information on the status of the Yellowstone cutthroat trout. The Service will base its 12-month finding on a review of the best scientific and commercial information available, including all information received during the public comment period.

Public Comments Solicited

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Please submit electronic comments in an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include ''Attn: (*Oncorhynchus clarki bouvieri*)'' and your name and return address in your e-mail message regarding the (*Oncorhynchus clarki bouvieri*) status review. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above.

Author

The primary author of this document is Wade Fredenberg, Fisheries Biologist, U.S. Fish and Wildlife Service, Creston Fish and Wildlife Center, Kalispell, Montana.

Authority: The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 19, 2005.

Marshall Jones,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–17455 Filed 8–31–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 050628170–5170–01; I.D. 062105B]

RIN 0648–AR67

Groundfish Fisheries of the Exclusive Economic Zone Off the Coast of Alaska; Recordkeeping and Reporting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to revise Table 2 (species codes) to 50 CFR part 679 that is used in data collection, analysis, and monitoring of the Federal groundfish fisheries in the exclusive economic zone (EEZ) off the coast of Alaska. Within a database, species codes identify fish species that are landed, discarded, made into product, and transferred. This proposed action is necessary to standardize collection of species information with the State of Alaska Department of Fish and Game, increase effectiveness of rockfish management, reflect current fisheries management interest in skates, and promote better enforcement of rockfish regulations. This action is intended to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with respect to groundfish and to further the goals and objectives of the Alaska groundfish fishery management plans.

DATES: Written comments must be received by October 3, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: (907) 586 7557.
- E-mail: *BSA82-0648-AS37@noaa.gov*. Include in the subject line the following document identifier: Table 2 Species Code proposed rule. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the Regulatory Impact Review (RIR) prepared for this action are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586 7228.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Alaska Region, and by e-mail to *DavidlRostker@omb.eop.gov*, or fax to (202) 395 7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea/Aleutian Islands Management Area (BSAI) in the EEZ according to the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMPs) prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) under authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The FMPs are implemented by regulations at 50 CFR part 679. General provisions governing fishing by U.S. vessels in accordance with the FMPs appear at subpart H of 50 CFR part 600.

Table 2 to Part 679 provides a list of FMP species and non-FMP species. The FMP species are those which are managed under the FMPs and which must be recorded and reported in logbooks and forms. The non-FMP species, including prohibited species, are species that are frequently caught in association with FMP species, but that are not actively managed under the FMPs. This action would support coordination between state and Federal management agencies by using the same species codes for State of Alaska Department of Fish and Game (State) and NMFS fishery catch documentation. Table 2 to part 679 would be reformatted from one table into four separate tables (Tables 2a, 2b, 2c, and 2d).

The proposed regulatory changes would have a number of fishery management and enforcement benefits. Within a database, species codes identify fish species that are landed, discarded, made into product, and transferred. The proposed rule would standardize collection of species information with the State of Alaska, facilitating Federal-State data exchange, reducing compliance costs, and reducing the potential for confusion, and resulting violations and fines. If NMFS and the State use different species codes or descriptions, fishermen or processors may record data incorrectly, possibly resulting in a ticket and/or fine, and diminishing the usefulness of the reported catch data. Moreover, the code changes will facilitate the more precise recording of catch by individual species within a species group. This would, for example facilitate management for a sustainable harvest of skates by permitting the estimates of the size of landings of individual skate species. The rockfish species code changes are needed to allow NOAA Fisheries Office for Enforcement (OLE) to perform an accurate audit on records of processors. OLE uses product transfer reports from processors to confirm that the quantity of fish, by species, reported as landings is approximately the same as the fish, by species, recorded as leaving the plant or vessel. By using group rockfish codes to describe the product, the processor's report effectively obscures the actual fish species being processed and/or transferred.

Table 2a would be entitled, ''Species Codes: FMP Groundfish Species'' and would contain the names and species codes of groundfish that are managed under the FMPs. Species codes in Table 2a would be indicated as those that must be recorded and reported in NMFS logbooks and forms.

Table 2b would be entitled, ''Species Codes: FMP Prohibited Species'' and would contain the names and species codes of species that are identified as prohibited species in the FMPs. Species codes in Table 2b would be indicated as those that must be recorded and reported in NMFS logbooks and forms.

Table 2c would be entitled, ''Species Codes: FMP Forage Fish Species'' and would contain the names and species codes of species that are identified as forage fish in the FMPs. Species codes in Table 2c would be indicated as species that must be recorded and reported in NMFS logbooks and forms.

Table 2d would be entitled, ''Species Codes: Non-FMP Species'' and would contain the names and species codes of species on which the State and NMFS have agreed for use on State fish tickets as well as NMFS logbooks and forms. These species codes may be recorded in NMFS logbooks and forms but are not required by regulations at 50 CFR part 679.

In addition, Tables 2a, 2b, 2c, and 2d would be revised by adding and revising certain species codes.

Table 2a

A species code, 702, would be added to Table 2a to describe big skate. NMFS has implemented separate management and harvest specifications for this skate species that requires a new species code for big skate (69 FR 26313, May 12, 2004). An identification guide of big skates and longnose skates is available from NMFS, Alaska Region (see **ADDRESSES**) or at *http://www.fakr.noaa.gov/infobulletins/2003/Raja__poster.jpg*.

The description ''skate general,'' code 700 in Table 2a, would be revised to say ''Other (if longnose or big skate - use specific species code).''

The description ''sharks general,'' code 689 in Table 2a, would be revised to say ''Other (if salmon, spiny dogfish or Pacific sleeper shark - use specific species code).''

The description ''miscellaneous flatfish,'' code 120, would be removed from the group codes and added to the FMP species in Table 2a as ''Flatfish, miscellaneous (flatfish species without separate codes).''

The Latin name for all individual rockfish species would be added to Table 2a, at the request of fishery scientists.

Table 2b

The species name for prohibited species code 932 in Table 2b, would be changed from ''*Opilio* tanner crab'' to read ''*C. opilio* (snow) tanner crab.''

The species name for prohibited species code 923 in Table 2b, would be changed from ''Gold/brown king crab'' to read ''Golden king (brown).''

Table 2c

Table 2c contains a list of the FMP forage fish species, and no changes would be made to this list.

Table 2d

A species code, 112, would be added to Table 2d for the species, Pacific hake. Fishermen increasingly are reporting catch of hake in the EEZ off Alaska. This creates the need for a new species code to record the catch.

The species name for non-FMP species code 961 in Table 2d, would be changed from ''Pink shrimp'' to read ''Northern (pink).''

Regulatory text

In § 679.2, the definition for ''Forage fish'' would be revised by removing ''Table 2'' and adding in its place ''Table 2c.''

In § 679.2, paragraph (1) of the definition for ''Groundfish'' would be revised by removing ''Table 2'' and adding in its place ''Table 2a.''

In § 679.2, the definition for ''Prohibited species'' would be revised by adding a reference to ''Table 2b.''

In § 679.5, titles and text of paragraphs (a)(1)(ii)(A), (B), and (C) would be revised by adding ''forage fish'' and by adding references to Tables 2a, 2b, and 2c.

In § 679.5, paragraph (m)(3)(v) would be revised by removing reference to group codes 144, 168, 169, or 171.

In § 679.5, paragraph (n)(2)(iv)(D) would be revised by removing ''Table 2'' and adding in its place ''Table 2b.''

In § 679.20, paragraph (i)(1) would be revised by removing ''see § 679.2'' and adding in its place ''See Table 2c to this part.''

In § 679.21, paragraph (b)(1) would be revised by removing ''see § 679.2'' and adding in its place ''see § 679.2 and Table 2b to this part.''

Other changes

The following rockfish group codes would be removed from Table 2 to part 679 and are not carried over into any of the proposed tables: 144, slope rockfish; 168, demersal shelf rockfish; 169, pelagic shelf rockfish; and 171, shortraker/rougheye rockfish. Rockfish group codes would not be accepted for purposes of reporting rockfish, as Recordkeeping and Reporting (R&R) regulations require that individual species be identified with specific species codes. Removal of these group codes does not alter the use of the terms, ''slope rockfish,'' ''demersal shelf rockfish,'' ''pelagic shelf rockfish,'' or ''shortraker/rougheye rockfish'' in Tables 10 and 11 to 50 CFR part 679. These terms are still valid for calculation of maximum retainable percentages for basis species.

This action may require a few participants to learn to identify individual species of rockfish. An identification guide for rockfish of the northeastern Pacific Ocean is available from NMFS, Alaska Region (see **ADDRESSES**) or at: *http://www.afsc.noaa.gov/race/media/publications/archives/pubs2000/techmemo117.pdf*.

Table 2 to 50 CFR part 679 would be reformatted from one table into four separate tables. In addition, the description of some species codes would be revised, two species codes would be added, and rockfish group species codes would be removed. The individual rockfish species codes that are included in rockfish group codes that would be removed are described below.

Code 144, slope rockfish, consisting of the following individual rockfish species: Aurora (185), Blackgill (177), Bocaccio (137), Chilipepper (178), Darkblotched (159), Greenstriped (135), Harlequin (176), Pygmy (179), Redbanded (153), Redstripe (158), Sharpchin (166), Shortbelly (181), Silvergray (157), Splitnose (182), Stripetail (183), Vermillion (184), and Yellowmouth (175).

Code 168, demersal shelf rockfish, consisting of the following individual rockfish species: Canary (146), China (149), Copper (138), Quillback (147), Rosethorn (150), Tiger (148), and Yelloweye (145).

Code 169, pelagic shelf rockfish, consisting of the following individual rockfish species: Dusky (154), Yellowtail (155), and Widow (156).

Code 171, shortraker/rougheye rockfish, consisting of the following individual rockfish species: Shortraker (152) and Rougheye (151).

Classification

NMFS has determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would standardize collection of species information with the State, increase effectiveness of rockfish management; reflect current fisheries management of skates; and promote better enforcement of rockfish regulations. While this action may affect a substantial number of small entities, it does not impose a significant burden on small entities.

Any operation that harvests groundfish in Alaska may find itself subject to this regulation. This may include 801 fishing operations (including catcher/processors) in the Gulf of Alaska (GOA), and 283 in the Bering Sea and Aleutian Islands Management Area (BSAI).[1] In addition,

[1] These are estimates of all small fishing entities (catcher vessels and catcher-processors) operating in the GOA and BSAI in 2002. These estimates are based on estimates of Alaskan groundfish harvests. They do not take account of harvests of other species in Alaska or elsewhere; moreover they do not take account of affiliations between firms. For these reasons, they may overstate the numbers of small entities in the BSAI and GOA. They include 131 vessels fishing with pots in the GOA and 64 fishing with pots in the BSAI. Fishermen fishing with pot gear may not harvest many skates or hake. These estimates are taken from Table 26.2 of the 2003 Economic SAFE document. This is Appendix D to the EA/RIR/IRFA for the 2003 harvest

Continued

it may include the six Community Development Quota groups that operate in the BSAI.Similarly, this action also directly regulates shoreside processors and shoreside floating processors that process groundfish. The NMFS, Alaska Region Catch Accounting System indicates that 4 motherships, and 65 shoreside processors (including floating shoreside processors) processed groundfish in 2003. All could be affected by this action; however, it is not possible to determine the number of small entities among these processors. Available information does not clearly identify numbers of employees at all plants, nor does it clearly indicate ownership affiliations in all cases. As noted below, the impacts of this action on entities are not significant. Therefore, the analysis is not affected if all ambiguous cases, where the size of an entity is unknown, are resolved by assuming that entities are small.

These data also allow an analysis of the individual vessels and processing plants that use rockfish group codes and have revealed that 4 catcher/processors and 2 catcher/processors operating as motherships used rockfish group codes in either 2002 or 2003. It is not possible to determine whether these vessels are small entities; however, the NMFS Alaska Region Catch Accounting System indicates that 85 catcher/processors and/or catcher/processors operating as motherships processed groundfish in the EEZ off Alaska in 2003. Thus, 6 of the 85 operations that harvested and processed groundfish actually used the group codes and will be required to change their practice. In addition, 12 shoreside processing plants used rockfish group codes in either 2002 or 2003. Of these, available data on American Fisheries Act affiliations, corporate ownership, and employment statistics[2] suggest that 7 are likely large entities and potentially 5 are small entities. Thus, 12 of the 65 shoreside processors that processed groundfish actually used rockfish group codes and potentially 5 of those are small entities.

This action does not impose a significant economic impact on small entities. Vessel operators and processors would be required to report hake, big skates, sharks, and rockfish species, separately, on landing and processing records. They are not required to report separately now; however, they must currently record all these fish under one of the existing codes. As a result, the additional reporting burden is *de minimis*. Additionally, the ADF&G implemented a requirement that fishermen identify these species separately on ADF&G landings records, starting in 2004. Therefore, fishermen that delivered their harvests inshore or onshore for processing were under an obligation to report these species separately starting in 2004. Most of the fishing operations that fall under these new ADF&G reporting rules are believed to be small entities, as are many of the processors to whom they will be delivering. As a result, an amendment to Federal reporting to make it consistent with State requirements would be less costly than doing nothing. Should Federal reporting requirements not be changed to coincide with these ADF&G rule changes, additional complexity, cost, and potential confusion leading to violations and fines may result. For both reasons, NMFS believes the economic impact of this rule, if adopted, would be negligible.

The reformatting of Table 2, inclusive of definition changes and rockfish Latin name inclusion, will make it easier to refer to the different classes of fish species from other parts of the regulations, because NMFS would be able to specifically cite those species intended. This reformatting is not expected to affect the fishing industry directly. The addition of Pacific hake, skates, and sharks species code may increase the reporting burden slightly. However, the cost may be offset to some extent by the easing of the reporting risk, due to clarification of procedures for reporting catch of these species.

The elimination of rockfish group codes would have *de minimis* financial costs for the fishing industry. The affected participants would be those processors who occasionally use rockfish group codes, plus one processor that will need to change its production operation in order to correctly identify transfer of processed rockfish by species. The time burden for collecting data (i.e., entering of species codes in the daily cumulative production logbooks and daily fishing logbooks) may increase very slightly, although the older codes will be replaced by the proposed codes. Overall, the industry did not use the group codes regularly during 2002 and 2003, and the numbers of processors that used rockfish group codes are small relative to the number of processors who process rockfish. Based on 2003 data, it appears that shoreside processors voluntarily identified rockfish landings by individual species code 99 percent of the time, and used group codes less about 1 percent of the time. In 2003 catcher processors and motherships only used rockfish group codes on about 5% of weekly processor reports.

Finally, the proposed action will assure consistency with current ADF&G reporting rules and, thus, reduce the reporting burden, uncertainty, and confusion that would arise from having two conflicting sets of reporting codes. Because small entities are more likely to fish in the EEZ and land their catch in Alaska State waters or onshore, this burden would fall disproportionately on them. The proposed action removes this potentiality.

This proposed rule contains collection-of-information requirements that are subject to review and approval by OMB under the Paperwork Reduction Act (PRA) and which have been approved by OMB. The collections are listed below by OMB Control Number.

OMB Control Number 0648–0213. Total public reporting burden for this collection is 41,219 hours. Species codes are recorded and reported in this collection.

OMB Control Number 0648–0401. Total public reporting burden for this collection is 1,024 hours. Species codes are recorded and reported in this collection.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSEES**) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule does not duplicate, overlap, or conflict with other Federal regulations.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 26, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

specifications. Accessed at *http://www.fakr.noaa.gov/npfmc/safes/2002/Economic.pdf* on October 17, 2003.

[2] Compiled from Directory of Seafood Processors, Pacific Fishing Magazine, January 2004; Alaska Department of Labor processing plant monthly employment counts; and American Fisheries Act entities information from NMFS, Alaska Region Sustainable Fisheries Division.

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.;* 1851 note; 3631 *et seq.*

§§ 679.2, 679.5, 679.20, and 679.21 [Amended]

2. In the table below, for each of the paragraphs shown in the ''Location'' column, remove the phrase indicated in the ''Remove'' column and replace it with the phrase indicated in the ''Add'' column for the number of times indicated in the ''Frequency'' column.

Location	Remove	Add	Frequency
§ 679.2 definition for ''Forage fish''	(see Table 2 to this part)	(see Table 2c to this part and § 679.20(i))	1
§ 679.2 definition for paragraph (1) ''Groundfish''	Table 2	Table 2a	1
§ 679.2 definition for ''Groundfish product or fish product''	Tables 1 and 2 to this part, excluding the prohibited species listed in Table 2 to this part	Tables 1, 2a, 2c, and 2d to this part	1
§ 679.2 definition for ''Prohibited species''	Tanner crab	Tanner crab (see Table 2b to this part)	1
§ 679.5(a)(1)(ii)(A), (B), and (C) paragraph heading	Groundfish and prohibited species	Groundfish, prohibited species, and forage fish	1
§ 679.5(a)(1)(ii)(A), (B), and (C)	all groundfish and prohibited species	all groundfish (see Table 2a to this part), prohibited species (see Table 2b to this part), and forage fish (see Table 2c to this part)	1
§ 679.5(m)(3)(v)	code for each species from Table 2 to this part, except species codes 120, 144, 168, 169, or 171;	code for each species from Tables 2a though 2d to this part, except species code 120	1
§ 679.5(n)(2)(iv)(D)	Table 2	Table 2b	1
§ 679.20(i)(1)	See § 679.2	See Table 2c to this part	1
§ 679.21(b)(1)	See § 679.2	See § 679.2 and Table 2b to this part	1

Table 2 to Part 679 [Amended]

3. Table 2 to Part 679 Species Codes for FMP Species and non-FMP Species is removed and Tables 2a, 2b, 2c, and 2d to Part 679 are added as follows:

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUNDFISH

Species Description	Code
Atka mackerel (greenling)	193
Flatfish, miscellaneous (flatfish species without separate codes)	120
FLOUNDER	
Alaska plaice	133
Arrowtooth and/or Kamchatka	121
Starry	129
Octopus	870
Pacific cod	110
Pollock	270
ROCKFISH	

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUNDFISH—Continued

Species Description	Code
Aurora (*S. aurora*)	185
Black (BSAI) (*S. melanops*)	142
Blackgill (*S. melanostomus*)	177
Blue (BSAI) (*S. mystinus*)	167
Bocaccio (*S. paucispinis*)	137
Canary (*S. pinniger*)	146
Chilipepper (*S. goodei*)	178
China (*S. nebulosus*)	149
Copper (*S. caurinus*)	138
Darkblotched (*S. crameri*)	159
Dusky (*S. ciliatus*)	154
Greenstriped (*S. elongatus*)	135
Harlequin (*S. variegatus*)	176
Northern (*S. polyspinis*)	136

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUNDFISH—Continued

Species Description	Code
Pacific ocean perch (*S. alutus*)	141
Pygmy (*S. wilsoni*)	179
Quillback (*S. maliger*)	147
Redbanded (*S. babcocki*)	153
Redstripe (*S. proriger*)	158
Rosethorn (*S. helvomaculatus*)	150
Rougheye (*S. aleutianus*)	151
Sharpchin (*S. zacentrus*)	166
Shortbelly (*S. jordani*)	181
Shortraker (*S. borealis*)	152
Silvergray (*S. brevispinis*)	157
Splitnose (*S. diploproa*)	182
Stripetail (*S. saxicola*)	183

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUNDFISH—Continued

Species Description	Code
Thornyhead (all *Sebastolobus* species)	143
Tiger (*S. nigrocinctus*)	148
Vermilion (*S. miniatus*)	184
Widow (*S. entomelas*)	156
Yelloweye (*S. ruberrimus*)	145
Yellowmouth (*S. reedi*)	175
Yellowtail (*S. flavidus*)	155
Sablefish (blackcod)	710
Sculpins	160
SHARKS	
Other (if salmon, spiny dogfish or Pacific sleeper shark - usespecific species code)	689
Pacific sleeper	692
Salmon	690
Spiny dogfish	691
SKATES	
Big	702
Longnose	701
Other (if longnose or big skate - use specific species code)	700
SOLE	
Butter	126
Dover	124
English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid	875
Turbot, Greenland	134

TABLE 2B TO PART 679—SPECIES CODE: FMP PROHIBITED SPECIES

Species Description	Code
CRAB	
King, blue	922
King, golden (brown)	923
King, red	921
King, scarlet	924
Tanner, Bairdi (*C. bairdi*)	931
Tanner, grooved	933
Tanner, snow (*C. opilio*)	932
Tanner, triangle	934
Pacific halibut	200
Pacific herring (family *Clupeidae*)	235
SALMON	
Chinook	410
Chum	450
Coho	430
Pink	440
Sockeye	420
Steelhead trout	540

TABLE 2C TO PART 679—SPECIES CODES: FMP FORAGE FISH SPECIES

(all species of the following families)

Species Description	Code
Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*)	209
Capelin smelt (family *Osmeridae*)	516
Deep-sea smelts (family *Bathylagidae*)	773
Eulachon smelt (family *Osmeridae*)	511
Gunnels (family *Pholidae*)	207
Krill (order *Euphausiacea*)	800
Laternfishes (family *Myctophidae*)	772
Pacific sandfish (family *Trichodontidae*)	206
Pacific sand lance (family *Ammodytidae*)	774

TABLE 2C TO PART 679—SPECIES CODES: FMP FORAGE FISH SPECIES—Continued

(all species of the following families)

Species Description	Code
Pricklebacks, war-bonnets, eelblennys, cockscombs and shannys (family *Stichaeidae*)	208
Surf smelt (family *Osmeridae*)	515

TABLE 2D TO PART 679—SPECIES CODES—NON-FMP SPECIES

Species Description	Code
Abalone	860
Albacore	720
Arctic char, anadromous	521
CLAMS	
Butter	810
Cockle	820
Eastern softshell	842
Geoduck	815
Little-neck	840
Razor	830
Surf	812
Coral	899
CRAB	
Box	900
Dungeness	910
Korean horsehair	940
Multispina (*Paralomis multispina*)	951
Verrilli (*Paralomis verillii*)	953
Dolly varden, anadromous	531
Eels or eel-like fish	210
Giant grenadier	214
GREENLING	
Kelp	194
Rock	191
Whitespot	192
Grenadier (rattail)	213
Jellyfish	625
Lamprey, Pacific	600

TABLE 2D TO PART 679—SPECIES CODES—NON-FMP SPECIES—Continued

Species Description	Code
Lingcod	130
Lumpsucker	216
Mussel, blue	855
Pacific flatnose	260
Pacific hagfish	212
Pacific hake	112
Pacific saury	220
Pacific tomcod	250
Prowfish	215
Rockfish, black (GOA)	142

TABLE 2D TO PART 679—SPECIES CODES—NON-FMP SPECIES—Continued

Species Description	Code
Rockfish, blue (GOA)	167
Sardine, Pacific (pilchard)	170
Scallop, weathervane	850
Scallop, pink (or calico)	851
Sea cucumber	895
Sea urchin, green	893
Sea urchin, red	892
Shad	180
SHRIMP	
Coonstripe	964

TABLE 2D TO PART 679—SPECIES CODES—NON-FMP SPECIES—Continued

Species Description	Code
Humpy	963
Northern (pink)	961
Sidestripe	962
Spot	965
Skilfish	715
Smelt, surf	515
Snails	890
Sturgeon, general	680

[FR Doc. 05–17454 Filed 8–31–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 169

Thursday, September 1, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Working Principles for Revising the Advisory Council on Historic Preservation's ''Policy Statement Regarding Treatment of Human Remains and Grave Goods''

AGENCY: Advisory Council on Historic Preservation (ACHP).

ACTION: Notice of intent to reconsider the Advisory Council on Historic Preservation's ''Policy Statement Regarding Treatment of Human Remains and Grave Goods.''

SUMMARY: The Advisory Council on Historic Preservation (ACHP) is revisiting its ''Policy Statement Regarding Treatment of Human Remains and Grave Goods,'' adopted in 1988 (1988 Human Remains Policy). A Task Force composed of ACHP members has drafted a set of Working Principles, which are presented below, to guide possible revision of the 1988 Human Remains Policy. The ACHP invites your views and observations on these principles. The Task Force will use your comments to prepare a draft revision of the 1988 Human Remains Policy. That draft will then be subject to further consultation and opportunity to comment, before a final draft is presented to the ACHP membership for adoption.

DATES: Submit comments on or before November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Address all comments concerning these working principles to the Archaeology Task Force, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606–8672. Comments may also be submitted by electronic mail to: *archeology@achp.gov*. Please note that all responses become part of the public record once they are submitted to the ACHP. Please refer any questions to Dr. Tom McCulloch at 202–606–8505.

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP) is preparing to revisit its ''Policy Statement Regarding Treatment of Human Remains and Grave Goods,'' adopted 1988 (1988 Human Remains Policy).

In April 2004 the ACHP formed a Task Force on Archaeology (Task Force), and sought comments on suggested modifications and additions to existing ACHP policy guidance regarding how archeology is carried out pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (Section 106), and its implementing regulations, 36 CFR part 800 (Section 106 regulations). Section 106 requires Federal agencies to take into account the effects of their undertakings on historic properties and provide the ACHP a reasonable opportunity to comment on such undertakings.

The Task Force solicited the comments of Federal, Tribal and State Historic Preservation Officers, all Federally-recognized Indian tribes, Native Hawaiian organizations, and major professional archaeological organizations in this effort.

From these comments, the Task Force identified several key issues requiring attention. One of the priority issues is revisiting the 1988 Human Remains Policy. At its Spring 2005 meeting, the ACHP membership voted unanimously to direct the Task Force to revisit the 1988 Human Remains Policy. The Task Force has drafted a set of Working Principles, which are presented below, to guide this effort.

We invite your views and observations on these principles. The Task Force will use your comments to prepare a draft revision of the 1988 Human Remains Policy. This draft then will be subject to further review and comment. The Task Force recognizes the unique legal relationship that exists between the Federal Government and Federally-recognized Indian tribes. Accordingly, the ACHP's consultation with Indian tribes will be held on a Government-to-Government basis. Following consideration of all comments provided, the Task Force may present a revised, draft policy statement to the full ACHP membership for adoption.

Background Information

The Section 106 process and purpose of the 1988 Human Remains Policy: Section 106 seeks to accommodate historic preservation concerns through a process of consultation between the Federal agency official and other parties having an interest in the effects of undertakings on all kinds of historic properties. In some cases, these properties contain cemeteries or other burial grounds with human remains and funerary objects. The Section 106 process requires that the Federal agency consult with other parties, and then make an informed and reasoned decision about what should be done in each case. Although final decisions in the Section 106 review process are the responsibility of the Federal agency official with approval authority over the undertaking, Federal or state law may prescribe a certain outcome. It is in reaching these decisions that Federal agencies look to the 1988 Human Remains Policy for guidance.

The current ACHP policy is a formal statement, endorsed by the full ACHP membership in 1988, representing the membership's collective thinking about what to consider in reaching decisions about human remains and funerary objects encountered in undertakings on Federal, tribal, State, or private lands (the term ''funerary objects'' will be used in any revised policy statement to replace the term ''grave goods.'' As NAGPRA defines them they are ''items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains''). Unlike Federal and State laws that may circumscribe how human remains and funerary objects are treated on Federal, tribal, and State lands, the 1988 Human Remains Policy does not prescribe a specific outcome, but rather serves to focus thinking about what needs to be considered in reaching a decision.

Nature of the current debate: Most people would agree that human remains and the items buried with them should not be disturbed. initiated early enough, the Section 106 process should allow for alternatives to disturbance of locations known to contain human remains, including avoidance and preservation in place, to be thoroughly explored. However, during consultation about

what to do when disturbance of human remains is unavoidable, the parties' viewpoints tend to fall somewhere into one of two broad camps. Some believe that the information human remains and funerary objects can provide about the past when studied by archaeologists and other specialists requires that the remains, which usually are removed from the ground at public expense, be subject to scientific analysis. Others argue that human remains and their associated funerary objects, due to their cultural significance and spiritual value to living communities, should be immediately and respectfully reburied or repatriated for reburial without study.

Objectives of an updated policy: In revisiting the 1988 Human Remains Policy, the ACHP wishes to assert its leadership in historic preservation for the Federal Government and for parties affected by the Section 106 process. The ACHP hopes that any new policy it might develop for application to decisions made in the context of the Section 106 review process will provide an important model for other organizations, agencies, or governments seeking to develop their own policies on the treatment of all human remains, burial sites, and associated funerary objects.

Through any revision to the existing policy or any new policy it might develop, the ACHP hopes to offer leadership in resolving how to balance the public interest in the desire to treat human remains in a respectful and sensitive manner, while recognizing the public interest in knowing its collective past. Specifically, any new policy would guide decision-making under Section 106 when questions involving the treatment of human remains and funerary objects must be resolved in the absence of Federal or State law circumscribing the treatment of human remains and funerary objects. Any new ACHP human remains policy statement would not be bound by geography, ethnicity or nationality; it would apply to the treatment of all human remains encountered in Section 106 review.

The Section 106 consultation process does not mandate a particular outcome. Accordingly, any new policy would not direct Federal agencies to make specific decisions. Rather, as a statement of the collective thinking of the ACHP membership, a new policy should guide Federal agencies in resolving the difficult question of what to do with human remains when Federal or State laws do not already prescribe a certain outcome.

The following is the text of the working principles on which comment is sought through this notice:

Working Principles

Any ACHP revised and updated policy will:

—Address treatment of all human remains and funerary objects in the context of compliance with Section 106 of the National Historic Preservation Act (Section 106);
—Encourage Federal agencies to initiate the Section 106 process early in their planning processes;
—Address human remains and funerary objects of all people;
—Be consistent, and work in concert, with other Federal, State, tribal, and local laws;

Principle 1: The policy statement should recognize that human remains must be treated with respect and dignity.

Principle 2: The policy statement should clarify the intersection between Section 106 and other legal authorities.

—The policy statement needs to clarify the intersection between the requirements of Section 106 and the Native American Graves Protection and Repatriation Act (NAGPRA).
—The policy statement needs to clarify the intersection between the requirements of Section 106, State burial laws and other applicable laws.
—The policy statement needs to recognize that a Federal agency official under Section 106 has a duty for the care of human remains and funerary objects.

Principle 3: The policy statement should emphasize that avoidance, followed by preservation in place, is the preferred alternative to disturbance of human remains and funerary objects.

—Federal undertakings should disturb human remains and funerary objects only if absolutely necessary, and then only after exploring other alternatives early in project planning.
—In order to realistically consider avoidance and preservation in place, Federal agencies need to initiate the Section 106 process early in planning.
—Federal agencies must recognize that simple avoidance of a site does not necessarily ensure that site's long-term preservation.

Principle 4: The policy statement should recognize that Federal agencies are responsible for meaningful consultation with all interested parties as a means to achieve compliance with the law.

—In accordance with the NHPA, the Federal agency official with jurisdiction over the undertaking has the responsibility to make the final decisions in Section 106 review after completing, and being informed, by the consultation process. However, it is recognized that Federal or State law may prescribe a certain outcome.
—Agency decisions regarding treatment and ultimate disposition must be based on a careful consideration of all views.
—The legal Government-to-Government obligations of Federal agencies to Indian tribes emanating from various statutes, Executive orders, treaties or court decisions should have a bearing on Federal agency decisions regarding the treatment and disposition of Native American human remains and funerary objects.
—Planning for the disposition of human remains should occur early in the process.

Principle 5: The policy statement should guide the Federal agency official in decision making.

—The policy statement should clarify the roles of different groups concerned with the effects of the undertaking on historic properties in making decisions.
—The policy statement should clarify how the Federal agency weighs the views presented by the different parties in arriving at a final decision, recognizing that Federal or State law may prescribe a certain outcome.

Principle 6: The policy statement should call for Federal agencies to develop procedures for the preservation and treatment of human remains discovered inadvertently, or when there is the potential for an undertaking to discover human remains.

—The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects when they are inadvertently discovered.
—The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects where they may be anticipated to be encountered as part of National Register eligibility investigations and data recovery investigations.
—The policy should encourage Federal agencies to develop policy and operational procedures for treatment of human remains and funerary objects exposed during natural disasters or encountered during emergency responses to such disasters.
—The policy should encourage Federal agencies to develop these procedures in consultation with all interested parties consistent with Principle 4.
—If a site is avoided, Federal agencies should have a procedure in place to provide the owners with guidance developed by the Secretary of the Interior under Section 112(b) of the NHPA and supplemental guidance that encourages protection of important archaeological properties, including burial sites.

End of text of the principles.

The following is the text of the 1988 Human Remains Policy. It is reproduced here only for reference purposes. Again, the comments sought through this notice are on the principles presented above.

Policy Statement Regarding Treatment of Human Remains and Grave Goods

Adopted by the Advisory Council on Historic Preservation September 27, 1988, Gallup, New Mexico

When human remains or grave goods are likely to be exhumed in connection with an undertaking subject to review under Section 106 of the National Historic Preservation Act, the consulting parties under the Council's regulations should agree upon arrangements for their disposition that, to the extent

allowed by law, adhere to the following principles:

—Human remains and grave goods should not be disinterred unless required in advance of some kind of disturbance, such as construction;

—Disinterment when necessary should be done carefully, respectfully, and completely, in accordance with proper archaeological methods;

—In general, human remains and grave goods should be reburied, in consultation with the descendants of the dead.

—Prior to reburial, scientific studies should be performed as necessary to address justified research topics;

—Scientific studies and reburial should occur according to a definite, agreed-upon schedule; and,

—Where scientific study is offensive to the descendants of the dead, and the need for such study does not outweigh the need to respect the concerns of such descendants, reburial should occur without prior study. Conversely, where the scientific research value of human remains or grave goods outweighs any objections that descendants may have to their study, they should not be reburied, but should be retained in perpetuity for study.

Authority: 16 U.S.C. 470j

Dated: August 26, 2005.

John M. Fowler,

Executive Director.

[FR Doc. 05–17437 Filed 8–31–05; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 26, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Social Dimensions of Fuel Reduction Treatment in the Southern Appalachian Region.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest and Rangeland Renewable Resources Research Act of 1978, as amended, authorizes the Forest Service (FS) to collect information to help identify the range of knowledge, attitudes and values interested publics hold toward fuel-load reduction and resulting aesthetic and ecological changes. Fuel loads in the forest of the Southern Appalachian Mountain pose significant risk of wildfire. Among forest ecologists there is a growing awareness that there may be some value to conducting prescribed fires and mechanical thinning to reduce the concentration of shrubs and under-story trees in some parts of the Southern Appalachian Mountains. These treatments, particularly if they were to be implemented over large areas, would change the visual and ecological character of the Southern Appalachian Mountains. FS will collect information using the Internet and a mail-back questionnaire.

Need and Use of the Information: FS will collect information describing respondents' perceptions of the aesthetic (visual), economic and ecological results of prescribed fire and mechanical thinning. The collected information will provide profiles of different groups or clusters of people and how each group perceives the economic, aesthetic and ecological results of forest management action. Without the information programs will be less efficient and accurate and unneeded conflicts and misunderstandings may be more common.

Description of Respondents: Individuals or households.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 304.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–17380 Filed 8–31–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2006 Tariff-Rate Import Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the fee to be charged for the 2006 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule of the United States (HTS) will be $150.00 per license.

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Bettyann Gonzales, Dairy Tariff-Rate Import Quota Program, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–1344 or E-mail at *Bettyann.Gonzales@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Quota Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles that are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff-rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles is monitored by the Dairy

Import Quota Manager, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, and the U.S. Customs Service.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2006 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 2005 has been determined to be $383,000 and the estimated number of licenses expected to be issued is 2,550. Of the total cost, $210,000 represents staff and supervisory costs directly released to administering the licensing system for 2005; $50,000 represents the total computer costs to monitor and issue import licenses for 2005; and $123,000 represents other miscellaneous costs, including travel, postage, publications, forms, Internet software development, and ADP system contractors.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2006 calendar year, in accordance with 7 CFR 6.33, will be $150.00 per license.

Issued at Washington, DC the 23rd day of August, 2005.

Michael Hankin,

Licensing Authority.

[FR Doc. 05–17414 Filed 8–31–05; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on September 20, 2005, at the North Tahoe Conference Center, 8318 N. Lake Blvd., Kings Beach, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held September 20, 2005, beginning at 1 p.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 N. Lake Blvd., Kings Beach, CA.

FOR FURTHER INFORMATION CONTACT: Gloria Trahey, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2643.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: (1) A Public Workshop co-hosted by the Tahoe Regional Planning Agency; and (2) and an update on the Southern Nevada Public Land Management Act Process. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: August 25, 2005.

Tyrone Kelley,

Deputy Forest Supervisor.

[FR Doc. 05–17407 Filed 8–31–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[05–01–S]

Designation for Aberdeen (SD), Decatur (IL), Hastings (NE), Clinton (IA), Missouri, South Carolina, and Wisconsin Areas, and Amendment to the Eastern Iowa (IA) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Aberdeen Grain Inspection, Inc. (Aberdeen); Decatur Grain Inspection, Inc. (Decatur); Hastings Grain Inspection, Inc. (Hastings); John R. McCrea Agency, Inc. (McCrea); Missouri Department of Agriculture (Missouri); South Carolina Department of Agriculture (South Carolina); and Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa). The designation of Eastern Iowa has been amended to include the area formerly designated to Wisconsin Department of Agriculture, Trade and Consumer Protection, excluding the export locations delegated to Wisconsin.

EFFECTIVE DATE: October 1, 2005.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at (202) 720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 1, 2005 **Federal Register** (70 FR 9911), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by April 1, 2005.

Aberdeen, Decatur, Hastings, McCrea, Missouri, and South Carolina, were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

There were two applicants for the Wisconsin area: Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin) and Eastern Iowa. Wisconsin applied for designation to provide official services in the entire state of Wisconsin which was currently assigned to them. Eastern Iowa also applied for designation in all or part of the area currently assigned to Wisconsin.

GIPSA asked for comments on the applicants for providing service in the Wisconsin area in the June 1, 2005, **Federal Register** (70 FR 31417). Comments were due by July 1, 2005. GIPSA received one favorable comment supporting Eastern Iowa from a customer in Wisconsin. Wisconsin

subsequently withdrew their application for designation.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Aberdeen, Decatur, Eastern Iowa, Hastings, McCrea, Missouri, and South Carolina, are able to provide official services in the geographic areas specified in the March 1, 2005, **Federal Register**, for which they applied. These designation actions to provide official inspection services are effective October 1, 2005, and terminate September 30, 2008, for Aberdeen, Decatur, Hastings, McCrea, Missouri and South Carolina. For Eastern Iowa, the designation term is concurrent with their present designation, which began April 1, 2004, and terminates March 31, 2007. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation term
Aberdeen	Aberdeen, SD; (605) 225–8432; Additional location: Mitchell, SD	10/1/2005–9/30/2008
Decatur	Decatur, IL; (217) 429–2466	10/1/2005–9/30/2008
Eastern Iowa	Davenport, IA; (563) 322–7149; Additional locations: Dubuque and Muscatine, IA, Gulfport, IL, Beloit, WI.	4/1/2004–3/31/2007
Hastings	Hastings, NE; (402) 462–4254; Additional location: Grand Island, NE	10/1/2005–9/30/2008
McCrea	Clinton, IA; (563) 242–2073	10/1/2005–9/30/2008
Missouri	Jefferson City, MO; (573) 751–5515; Additional locations: Kansas City, Laddonia, Marshall, New Madrid, and St. Joseph, MO.	10/1/2005–9/30/2008
South Carolina	Columbia, SC; (843) 296–7522	10/1/2005–9/30/2008

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–17270 Filed 8–31–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[05–03–A]

Opportunity for Designation in the Jamestown (ND), Lincoln (NE), Memphis (TN), Omaha (NE), and Sioux City (IA), Areas, Request for Comments on the Official Agencies Serving These Areas, and Amendment to the Sioux City (IA) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in March 2006. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the quality of services provided by these currently designated agencies: Grain Inspection, Inc. (Jamestown); Lincoln Inspection Service, Inc. (Lincoln); Midsouth Grain Inspection Service (Midsouth); Omaha Grain Inspection Service, Inc. (Omaha); and Sioux City Inspection and Weighing Service Company (Sioux City). The designation of Sioux City has been amended to include the former Fort Dodge, Iowa, area.

DATES: Applications and comments must be postmarked or electronically dated on or before October 3, 2005.

ADDRESSES: We invite you to submit applications and comments on this notice. You may submit applications and comments by any of the following methods:

- Hand Delivery or Courier: Deliver to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- Fax: Send by facsimile transmission to (202) 690–2755, attention: Janet M. Hart.
- E-mail: Send via electronic mail to *Janet.M.Hart@usda.gov.*
- Mail: Send hardcopy to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at (202) 720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512π1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

For Jamestown, main office in Jamestown, North Dakota; Lincoln, main office in Lincoln, Nebraska; Midsouth, main office in Memphis, Tennessee; Omaha, main office in Omaha, Nebraska; and Sioux City, main office in Sioux City, Iowa; the current designations started April 1, 2003 and will end March 31, 2006. Sioux City amended their designation due to the purchase of the formerly designated corporation, A.V. Tischer and Son, Inc., main office in Fort Dodge, Iowa, effective September 1, 2005.

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of North Dakota, is assigned to Jamestown.

Bounded on the North by Interstate 94 east to U.S. Route 85; U.S. Route 85 north to State Route 200; State Route 200 east to U.S. Route 83; U.S. Route 83 southeast to State Route 41; State Route 41 north to State Route 200; State Route 200 east to State Route 3; State Route 3 north to the northern Wells County line, the northern Wells and Eddy County lines east; the eastern Eddy County line south to the northern Griggs County line; the northern Griggs county line east to State Route 32;

Bounded on the East by State Route 32 south to State Route 45; State Route 45 south to State Route 200; State Route 200 west to State Route 1; State Route

1 south to the Soo Railroad line; the Soo Railroad line southeast to Interstate 94; Interstate 94 west to State Route 1; State Route 1 south to the Dickey County line;

Bounded on the South by the southern Dickey County line west to U.S. Route 281; U.S. Route 281 north to the Lamoure County line; the southern Lamoure County line; the southern Logan County line west to State Route 13; State Route 13 west to U.S. Route 83; U.S. Route 83 south to the Emmons County line; the southern Emmons County line; the southern Sioux County line west State Route 49; State Route 49 north to State Route 21; State Route 21 west to the Burlington-Northern line; the Burlington-Northern line northwest to State Route 22; State Route 22 south to U.S. Route 12; U.S. Route 12 west-northwest to the North Dakota State line; and

Bounded on the West by the western North Dakota State line north to Interstate 94.

Jamestown's assigned geographic area does not include the following grain elevators inside Jamestown's area which have been and will continue to be serviced by the following official agency: Minot Grain Inspection, Inc.: Benson Quinn Company, Underwood; and Falkirk Farmers Elevator, Washburn, both in McLean County; and Harvey Farmers Elevator, Harvey, Wells County.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Iowa and Nebraska, is assigned to Lincoln.

Bounded on the North (in Nebraska) by the northern York, Seward, and Lancaster County lines; the northern Cass County line east to the Missouri River; the Missouri River south to U.S. Route 34; (in Iowa) U.S. Route 34 east to Interstate 29;

Bounded on the East by Interstate 29 south to the Fremont County line; the northern Fremont and Page County lines; the eastern Page County line south to the Iowa-Missouri State line; the Iowa-Missouri State line west to the Missouri River; the Missouri River south-southeast to the Nebraska-Kansas State line;

Bounded on the South by the Nebraska-Kansas State line west to County Road 1 mile west of U.S. Route 81; and

Bounded on the West (in Nebraska) by County Road 1 mile west of U.S. Route 81 north to State Highway 8; State Highway 8 east to U.S. Route 81; U.S. Route 81 north to the Thayer County line; the northern Thayer County line east; the western Saline County line; the southern and western York County lines.

Lincoln's assigned geographic area does not include the following grain elevators inside Lincoln's area which have been and will continue to be serviced by the following official agency: Omaha Grain Inspection Service, Inc.: Goode Seed & Grain, McPaul, Fremont County, Iowa; and Haveman Grain, Murray, Cass County, Nebraska.

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Arkansas, Mississippi, Tennessee, and Texas, is assigned to Midsouth.

The entire State of Arkansas.

The entire State of Mississippi, except those export port locations within the State. Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Lauderdale, Madison, McNairy, Shelby, and Tipton Counties, Tennessee.

Bowie and Cass Counties, Texas.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Cargill, Inc., Tiptonville, Lake County, Tennessee (located inside Cairo Grain Inspection Agency, Inc.'s, area).

d. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Iowa and Nebraska, is assigned to Omaha.

Bounded on the North by Nebraska State Route 91 from the western Washington County line east to U.S. Route 30; U.S. Route 30 east to the Missouri River; the Missouri River north to Iowa State Route 175; Iowa State Route 175 east to Iowa State Route 37; Iowa State Route 37 southeast to the eastern Monona County line;

Bounded on the East by the eastern Monona County line; the southern Monona County line west to Iowa State Route 183; Iowa State Route 183 south to the Pottawattamie County line; the northern and eastern Pottawattamie County lines; the southern Pottawattamie County line west to M47; M47 south to Iowa State Route 48; Iowa State Route 48 south to the Montgomery County line;

Bounded on the South by the southern Montgomery County line; the southern Mills County line west to Interstate 29; Interstate 29 north to U.S. Route 34; U.S. Route 34 west to the Missouri River; the Missouri River north to the Sarpy County line (in Nebraska); the southern Sarpy County line; the southern Saunders County line west to U.S. Route 77; and

Bounded on the West by U.S. Route 77 north to the Platte River; the Platte River southeast to the Douglas County line; the northern Douglas County line east; the western Washington County line northwest to Nebraska State Route 91.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Hancock Elevator, Elliot, Montgomery County, Iowa; Hancock Elevator (2 elevators), Griswold, Cass County, Iowa (located inside Central Iowa Grain Inspection Service, Inc.'s, area); United Farmers Coop, Rising City, Butler County, Nebraska; United Farmers Coop, Shelby, Polk County, Nebraska (located inside Fremont Grain Inspection Department, Inc.'s, area); and Goode Seed & Grain, McPaul, Fremont County, Iowa; Haveman Grain, Murray, Cass County, Nebraska (located inside Lincoln Inspection Service, Inc.'s, area).

e. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Iowa, Nebraska, and South Dakota, is assigned to Sioux City.

In Iowa:

Bounded on the North by the northern Iowa State line from the Big Sioux River east to U.S. Route 59; U.S. Route 59 south to B24; B24 east to the eastern O'Brien County line; the O'Brien County line south; the northern Buena Vista County line east to U.S. Route 71; U.S. Route 71 north to the northern Iowa State line east to U. S. Route 169;

Bounded on the East by U.S. Route 169 south to State Route 9; State Route 9 west to U.S. Route 169; U.S. Route 169 south to the northern Humboldt County line; the Humboldt County line east to State Route 17; State Route 17 south to C54; C54 east to U.S. Route 69; U.S. Route 69 south to the northern Hamilton County line; the Hamilton County line west to R38; R38 south to U.S. Route 20; U.S. Route 20 west to the eastern and southern Webster County lines to U.S. Route 169; U.S. Route 169 south to E18; E18 west to the eastern Greene County line; the Greene County line south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to E53; E53 west to N44; N44 north to U.S. Route 30; U.S. Route 30 west to U.S. Route 71; U.S. Route 71 north to the southern Sac and Ida County lines; the eastern Monona County line south to State Route 37; State Route 37 west to State Route 175; State Route 175 west to the Missouri River; and

Bounded on the West by the Missouri River north to the Big Sioux River; the Big Sioux River north to the northern Iowa State line.

In Nebraska:

Cedar, Dakota, Dixon, Pierce (north of U.S. Route 20), and Thurston Counties.

In South Dakota:

Bounded on the North by State Route 44 (U.S. 18) east to State Route 11; State Route 11 south to A54B; A54B east to the Big Sioux River;

Bounded on the East by the Big Sioux River; and

Bounded on the South and West by the Missouri River.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: West Central Coop, Boxholm, Boone County (located inside Central Iowa Grain Inspection Service, Inc.'s, area); and West Bend Elevator Co., Algona, Kossuth County; Stateline Coop., Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and North Central Coop, Holmes, Wright County (located inside D. R. Schaal Agency's area).

2. Opportunity for Designation

Interested persons, including Jamestown, Lincoln, Midsouth, Omaha, and Sioux City, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning April 1, 2006 and ending March 31, 2009. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *http://www.usda.gov/gipsa/oversight/parovreg.htm.*

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the quality of services for the Jamestown, Lincoln, Midsouth, Omaha, and Sioux City official agencies. In commenting on the quality of services, commenters are encouraged to submit pertinent data including information on the timeliness, cost, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–17271 Filed 8–31–05; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama, Arkansas, Louisiana and Mississippi Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Alabama, Arkansas, Louisiana and Mississippi Advisory Committees will convene at 1:30 p.m. and adjourn at 3:30 p.m. (CST) on Tuesday, August 30, 2005. The purpose of the conference call is to discuss and plan future activities in FY 2005–06.

This conference call is available to the public through the following call-in number: 1–800–473–8492, access code number 43412191. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office 913–551–1400 (TDD 913–551–1414), by 2 p.m. on Friday, August 26, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 29, 2005.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–17411 Filed 8–31–05; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review:

Not later than the last day of September 2005, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

Antidumping Duty Proceedings	Period
ARGENTINA: Certain Hot–Rolled Carbon Steel Flat Products.	
A–357–814	9/1/04 - 8/31/05
BELARUS: Steel Concrete Reinforcing Bars.	
A–822–804	9/1/04 - 8/31/05
CANADA: New Steel Rail, Except Light.	
A–122–804	9/1/04 - 2/8/05
INDONESIA: Steel Concrete Reinforcing Bars.	
A–560–811	9/1/04 - 8/31/05

Antidumping Duty Proceedings	Period
ITALY: Stainless Steel Wire Rod.	
A–475–820	9/1/04 - 8/31/05
JAPAN: Flat Panel Displays.	
A–588–817	9/1/04 - 8/31/05
JAPAN: Stainless Steel Wire Rod.	
A–588–843	9/1/04 - 8/31/05
LATVIA: Steel Concrete Reinforcing Bars.	
A–449–804	9/1/04 - 8/31/05
MOLDOVA: Steel Concrete Reinforcing Bars.	
A–841–804	9/1/04 - 8/31/05
POLAND: Steel Concrete Reinforcing Bars.	
A–455–803	9/1/04 - 8/31/05
REPUBLIC OF KOREA: Stainless Steel Wire Rod.	
A–580–829	9/1/04 - 8/31/05
REPUBLIC OF KOREA: Steel Concrete Reinforcing Bars.	
A–580–844	9/1/04 - 8/31/05
SOUTH AFRICA: Certain Hot–Rolled Carbon Steel Flat Products.	
A–791–809	9/1/04 - 8/31/05
SPAIN: Stainless Steel Wire Rod.	
A–469–807	9/1/04 - 8/31/05
SWEDEN: Stainless Steel Wire Rod.	
A–401–806	9/1/04 - 8/31/05
TAIWAN: Stainless Steel Wire Rod.	
A–583–828	9/1/04 - 8/31/05
THE PEOPLE'S REPUBLIC OF CHINA: Foundry Coke.	
A–570–862	9/1/04 - 8/31/05
THE PEOPLE'S REPUBLIC OF CHINA: Freshwater Crawfish Tail Meat.	
A–570–848	9/1/04 - 8/31/05
THE PEOPLE'S REPUBLIC OF CHINA: Greige Polyester/Cotton Printcloth.	
A–570–101	9/1/04 - 8/31/05
THE PEOPLE'S REPUBLIC OF CHINA: Steel Concrete Reinforcing Bars.	
A–570–860	9/1/04 - 8/31/05
UKRAINE: Silicomanganese.	
A–823–805	9/1/04 - 8/31/05
UKRAINE: Solid Agricultural Grade Ammonium Nitrate.	
A–823–810	9/1/04 - 8/31/05
UKRAINE: Steel Concrete Reinforcing Bars.	
A–823–809	9/1/04 - 8/31/05
Countervailing Duty Proceedings	
ARGENTINA: Certain Hot–Rolled Carbon Steel Flat Products.	
C–357–815	1/1/04 - 12/31/04
BRAZIL: Hot–Rolled Carbon Steel Flat Products.	
C–351–829	1/1/04 - 12/31/04
CANADA: New Steel Rail, Except Light Rail.	
C–122–805	1/1/04 - 12/31/04
Suspension Agreements	
None.	

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[1] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

As explained in Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at http://ia.ita.doc.gov.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce

[1] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of September 2005. If the Department does not receive, by the last day of September 2005, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 23, 2005.

Holly A. Kuga,

Senior Office Director AD/CVD Operations, Office 4, for Import Administration.

[FR Doc. E5–4801 Filed 8–31–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''Sunset Reviews'') of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-year Review* which covers these same orders.

EFFECTIVE DATE: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–570–832	731–TA–696	PRC	Pure Magnesium (Ingot)	Maureen Flannery (202) 482–3020
A–580–810	731–TA–540	South Korea	Welded ASTM A–312 Stainless Steel Pipe	Dana Mermelstein (202) 482–1391
A–583–815	731–TA–541	Taiwan	Welded ASTM A–312 Stainless Steel Pipe	Dana Mermelstein (202) 482–1391

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the Department's regulations regarding *Sunset Reviews* (19 CFR 351.218) and Sunset Policy Bulletin, the Department's schedule of Sunset Reviews, case history information (i.e., previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's Sunset Review website at the following address: ''http://ia.ita.doc.gov/sunset/.'' All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Because deadlines in a Sunset Review can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please

[1] In comments made on the interim final sunset regulations, a number of parties stated that the

consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 19, 2005.

Holly A. Kuga,

Senior Office Director AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E5–4800 Filed 8–31–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for October 2005

The following Sunset Reviews are scheduled for initiation in October 2005 and will appear in that month's Notice of Initiation of Five-year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Gray Portland Cement & Clinker from Japan (A–588–815)	Zev Primor (202) 482–4114
Gray Portland Cement & Clinker from Mexico (A–201–802)	Zev Primor (202) 482–4114
Countervailing Duty Proceedings	
No countervailing duty proceedings are scheduled for initiation in October 2005.	
Suspended Investigations	
No suspended investigations are scheduled for initiation in October 2005.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3--Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin''). The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 19, 2005.

Holly A. Kuga,

Senior Office Director, AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E5–4802 Filed 8–31–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Import Administration

[A–533–824]

Notice of Amended Final Determination in Accordance With Court Decision: Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 12, 2005, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the decision of the Court of International Trade (CIT) to sustain the final remand determination of the Department of Commerce (the Department) in the antidumping duty (AD) investigation of polyethylene terephthalate film, sheet, and strip (PET film) from India. *See*, *Dupont Teijin Films USA, LP, et al, v. United States and Polyplex Corp. Ltd.*, Slip Op. 04–1548, (May 12, 2005), and the Department's Final Results of Redetermination Pursuant to Court Remand in Dupont Teijin Films USA, LP, *et al*, v. United States and Polyplex Corp. Ltd., Consol. Court No. 02–00463. As there is now a final and conclusive court decision in this case, the Department is amending the final determination of sales at less than fair value.

EFFECTIVE DATE: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Howard Smith at (202) 482–4406 or (202) 482–5193, respectively; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2002, the Department published in the **Federal Register** the *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 Fed. Reg. 34899 (May 16, 2002) (*Final Determination*), covering

proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

the period April 1, 2000, through March 31, 2001.[1] In that determination, the Department calculated a dumping margin of 10.34 percent for Polyplex Corporation Limited (Polyplex); however, it excluded Polyplex from the AD order on PET film from India because its AD cash deposit rate was zero percent. The Department calculated the zero percent AD cash deposit rate by reducing the dumping margin of 10.34 percent by the 18.66 percent countervailing duty (CVD) rate on export subsidies that was established in the companion CVD investigation. *See*, *Issues and Decision Memorandum* accompanying the *Final Determination* at Comment 2. The petitioners filed a motion for judgment upon the agency record contesting the *Final Determination*, claiming that the Department should not have excluded Polyplex from the AD order based on a zero cash deposit rate when Polyplex's dumping margin is greater than *de minimis*. The Court of International Trade (CIT) held that the Department's exclusion of Polyplex from the order was in error, noting that the Department cannot exclude an exporter from an order because its cash deposit rate is zero. *See*, *Dupont Teijin Films USA, LP, et al, v. United States and Polyplex Corp. Ltd.*, 273 F. Supp. 2d 1347, 1352 (CIT July 9, 2003). In remanding the case to the Department, the CIT stated that the Department must calculate Polyplex's dumping margin after considering the applicability of 19 U.S.C. § 1677a[2] and must find Polyplex's merchandise to be subject to the AD order on PET film from India if the Department continues to calculate a dumping margin for the company of 10.34 percent.

On August 11, 2003, the Department issued its Final Results of Redetermination Pursuant to Court Remand in which it explained that countervailing duties are imposed upon the issuance of a CVD order, and that, at the time the Department issued its *Final Determination*, the order in the companion CVD investigation had not yet been issued. Thus, the Department argued, Polyplex's sales were not subject to a CVD order, and the decision not to increase U.S. price by the amount of the countervailing duty on export subsidies that was established in the companion CVD investigation was consistent with 19 U.S.C. § 1677a. Because Polyplex's dumping margin was 10.34 percent, the Department determined, consistent with the finding of the CIT decision, that Polyplex is subject to the AD order on PET film from India. In *Dupont Teijin Films USA, LP, et al, v. United States and Polyplex Corp. Ltd.*, 297 F. Supp. 2d 1367 (*Dupont Teijin II*), the CIT sustained the Department's determination in part, but remanded the case in part, instructing the Department to address certain concerns regarding the application of its new interpretation of ''imposed.''

On March 3, 2004, the Department issued its second Final Results of Redetermination Pursuant to Court Remand (Second Remand Determination) in which it addressed the CIT's concerns. On June 18, 2004, the CIT sustained the Department's Second Remand Determination in its entirety. *See*, *Dupont Teijin Films USA, LP, et al, v. United States and Polyplex Corp. Ltd.*, No. 02–00463, 2004 WL 1368838 (CIT June 18, 2004)(*Dupont Teijin III*). Polyplex timely appealed this decision to the CAFC.

On May 12, 2005, the CAFC affirmed the decision of the CIT in *Dupont Teijin III*, thereby sustaining the Department's Second Remand Determination and its determination that Polyplex is subject to the AD duty order on PET film from India.

As the litigation in this case has concluded, the Department is amending the *Final Determination*. Because the Department calculated a weighted–average dumping margin of 10.34 percent for Polyplex, Polyplex is subject to the AD order on PET film from India. However, as discussed above, for cash deposit purposes, the Department is subtracting from Polyplex's cash deposit rate the CVD rate on export subsidies that was established in the companion affirmative CVD determination (*i.e.*, 18.66 percent). After this adjustment, the cash deposit rate for Polyplex is zero.

This notice is issued and published in accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended.

Dated: August 26, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4799 Filed 8–31–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] This determination was subsequently amended to reflect the correction of a ministerial error. *See*, *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 Fed. Reg. 44175 (July 1, 2002).

[2] This section of the statute requires U.S. price to be increased by the amount of any countervailing duty imposed to offset export subsidies. In the *Final Determination*, the Department accounted for the countervailing duty on export subsidies by adjusting the AD cash deposit rate, rather than U.S. price.

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Cancellation Notice of September 16, 2005 Open Meeting.

Date: September 16, 2005.

Time: 8:30 a.m. to 4 p.m.

Place: Department of Commerce, 14th and Constitution NW., Washington DC 20230, Room 4830.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) has elected to cancel its previously scheduled September 16, 2005 plenary meeting. The meeting will be rescheduled for a later time to be determined in 2005.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC).

ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2006.

For further information phone Joseph Ayoub, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–5225 or *Joseph.Ayoub@mail.doc.gov.*

Dated: August 26, 2005.

Carlos F. Montoulieu,

Director, Office of Energy and Environmental Industries.

[FR Doc. E5–4798 Filed 8–31–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of charter renewal.

SUMMARY: The Department of Commerce's Chief Financial Officer and Assistant Secretary for Administration

has renewed the charter for the Science Advisory Board (SAB) for a 2-year period, through August 9, 2007. The SAB is a federal advisory committee under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: Renewed through August 9, 2007.

SUPPLEMENTARY INFORMATION: The charter has evolved since the SAB's inception in 1997 so as to accurately describe the SAB's purpose, membership, and administrative provisions. To more fully align the charter with the current state of the SAB and NOAA, the renewal charter has been modified as follows: (1) The first Objective has been changed to: ''The SAB will advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services, so as to better understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet the Nation's economic, social, and environmental needs.'' This change aligns the charter with NOAA's mission statement. (2) The SAB's Objectives and Duties now authorize the SAB to conduct NOAA Cooperative Institute reviews, in addition to those of NOAA laboratories and programs. (3) The Administrative Provisions have been modified to clarify that the SAB reports only to the Under Secretary, and so strengthens its senior advisory role within NOAA. (4) The Administrative Provisions have also been modified to clarify that, when deemed appropriate, the SAB can choose to appoint NOAA employees to task forces and working groups.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11152, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: *Michael.uhart@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: August 26, 2005.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 05–17443 Filed 8–31–05; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Representative and Address Provisions.

Form Number(s): PTO/SB/80/81/82/83/84/122/123/124A/124B/125A/125B.

Agency Approval Number: 0651–0035.

Type of Request: Revision of a currently approved collection.

Burden: 23,668 hours annually.

Number of Respondents: 370,766 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 3 to 12 minutes (0.05 to 0.2 hours) to gather the necessary information, prepare the form, and submit a completed request involving a power of attorney, correspondence address, or Customer Number. The USPTO estimates that it will take the public approximately 1 hour to prepare and submit a petition related to power of attorney and 1 hour and 30 minutes (1.5 hours) to submit a Customer Number Upload Spreadsheet, including the time to prepare the spreadsheet file on diskette or CD and to produce a signed cover letter.

Needs and Uses: Under 35 U.S.C. 2 and 37 CFR 1.31–1.36 and 1.363, this information collection is used by the public to grant or revoke power of attorney in a patent application, to withdraw as attorney or agent of record, to authorize a practitioner to act in a representative capacity, to designate or change the correspondence address or fee address for one or more applications or patents, to request a Customer Number, and to designate or change the correspondence address, fee address, or list of practitioners associated with a Customer Number. The Customer Number practice permits authorized individuals to change the correspondence address, fee address, or representatives of record for a number of patents or applications with one change request instead of filing separate requests for each patent or application. The USPTO uses the information in this collection to determine who is authorized to take action in an application or patent on behalf of the applicant or assignee and where to send correspondence regarding an application or patent. This information collection currently contains eight paper forms, and customers may also submit information using the Customer Number Upload Spreadsheet format. The USPTO is adding the Authorization to Act in a Representative Capacity (PTO/SB/84), two petitions, and electronic power of attorney submissions to this collection.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- *E-mail: Susan.Brown@uspto.gov.* Include ''0651–0035 copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 3, 2005 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: August 26, 2005.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 05–17408 Filed 8–31–05; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and

respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirement on respondents can be properly assessed.

Since 2003, the Spirit of Service awards has enabled the Corporation to recognize exceptional organizations and program participants from each of the Corporation's three programs: Senior Corps, AmeriCorps, and Learn and Serve. Prior to 2003, AmeriCorps recognized its outstanding members annually through the All-AmeriCorps Awards, which were initiated in 1999 and presented by President Clinton as part of the 5th anniversary celebration of the program. Senior Corps had recognized its outstanding projects and volunteers at its own national conference, and Learn and Serve America recognized exemplary programs and participants through its Leaders School selection and the President's Student Service Awards.

Currently, the Corporation is soliciting comments concerning the Spirit of Service Award nomination guidelines for the Corporate Award. This award is for people, companies, or organizations, who have a relationship with a grantee funded by the Corporation through Senior Corps, AmeriCorps, and/or Learn and Serve America and are nominated by a Corporation-sponsored grantee program.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by October 31, 2005.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of Public Affairs; Attention David Premo, Public Affairs Associate, Room 10302E; 1201 New York Avenue, NW, Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at the 8th Floor at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3460, Attention David Premo, Public Affairs Associate.

(4) Electronically through the Corporation's e-mail address system: *dpremo@cns.gov*.

FOR FURTHER INFORMATION CONTACT: David Premo, (202) 606–6717, or by e-mail at *dpremo@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background

The Corporate Spirit of Service Award nomination is completed by a Corporation grantee program representative (Senior Corps, AmeriCorps, and/or Learn and Serve America) to recognize people, companies or organizations that have made an exceptional contribution to their program. The application can be submitted electronically at *http://www.NationalService.gov/SpiritofService* or by my mail or overnight delivery or by hand delivery or by courier.

Current Action

The Corporation seeks to establish specific nomination guidelines for the Spirit of Service Corporate Award. This award will recognize people, companies, or organizations, that have made an exceptional contribution to a grantee program funded by the Corporation (Senior Corps, AmeriCorps, and/or Learn and Serve America).

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Spirit of Service Awards Nomination Guidelines and Application—Corporate.

OMB Number: None.

Agency Number: None.

Affected Public: Not-for-profit organizations, State, local and Tribal government, and other institutions supported by Senior Corps, AmeriCorps, and Learn and Serve America grants from the Corporation for National and Community Service.

Total Respondents: 200.

Frequency: Annual.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 600 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 26, 2005.

Sandy Scott,

Acting Director, Office of Public Affairs.

[FR Doc. 05–17391 Filed 8–31–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to Amend a System of Records; T7330 DFAS Payroll Locator File System (PLFS).

SUMMARY: The Defense Finance and Accounting Service is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 3, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279–8000, telephone (303) 676–6045.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting

Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 25, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

T7330

SYSTEM NAME:

DFAS Payroll Locator File System (PLFS) (November 29, 2002, 67 FR 71150).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Cutoff and destroy when record is superseded or becomes obsolete.''

* * * * *

T7330

SYSTEM NAME:

DFAS Payroll Locator File System (PLFS).

SYSTEM LOCATION:

Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, P.O. Box 998002, Cleveland, OH 44199–8002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is paid by the Defense Finance and Accounting Service is in this payroll locator file.

CATEGORIES OF RECORDS IN THE SYSTEM:

The locator file contains the individual's name, Social Security number, and payroll office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Financial Management Regulation 7000.14–R, Volumes 7A, 7B, 7C, 8, and 13; and E.O. 9397 (SSN).

PURPOSE(S):

This system of records is being established for the purpose of providing the Department of Defense with a single locator file that identifies those individuals paid by the Defense Finance and Accounting Service, the individual's employment status, and their payroll office location.

All records in this system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Treasury for the purpose of effecting salary offset procedures under the provisions of 5 U.S.C. 5514, against a person who owes a debt to the U.S. Government.

The DoD ''Blanket Routine Uses'' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the records and others who are authorized by the DFAS systems administrator at DFAS Cleveland, to use the record system in performance of their official duties. Records are stored in secured office buildings protected by guards and controlled by screening of personnel and the registration of visitors.

RETENTION AND DISPOSAL:

Cutoff and destroy when record is superseded or becomes obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel, Garnishment Operations, Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, P.O. Box 998002, Cleveland, OH 44199–8002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–8006.

Individuals should provide their full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Privacy Act Officer, Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–8006.

Individuals should provide their full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/ Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORDS SOURCE CATEGORIES:

Defense Finance and Accounting Service payroll systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–17300 Filed 8–31–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to amend a system of records; T7290 Nonappropriated Fund Accounts Receivable System.

SUMMARY: The Defense Finance and Accounting Service is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 3, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and

Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279–8000, telephone (303) 676–6045.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 25, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

T7290

SYSTEM NAME:

Nonappropriated Fund Accounts Receivable System (December 1, 2000, 65 FR 72545).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Destroy 4 years after cutoff.''

* * * * *

T7290

SYSTEM NAME:

Nonappropriated Fund Accounts Receivable System.

SYSTEM LOCATION:

Director, Defense Finance and Accounting Service—Indianapolis Center, Director for Support Activity, 8899 East 56th Street, Indianapolis, IN 46249–2130.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and past users of nonappropriated fund instrumentalities (NAFI) whose accounts show balances other than zero; persons using Post billeting facilities on a fee paid basis (bachelor officer quarters, visitor officer quarters and guest house facilities) and persons no longer using such facilities whose accounts have other than zero balances; any individual having a statement of account for the billing period, individuals occupying government housing at any military installation; individual class B telephone subscribers; members, customers or civilians having 30-day credit terms for charge sales and/or dues obligations to NAF activities; all persons whose accounts have been dishonored by banking institutions and their checks returned to NAF activities; and individuals who have cash loans charged to their accounts and any other debtor to a nonappropriated fund instrumentality (NAFI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, and rank; amount of charges, billings of items or services furnished; subsidiary ledgers containing detail of services billed and paid by individual; work order forms; invoice listings; monthly receipt vouchers; date and method of payment; file of billings associated with returned/dishonored checks; and other documents relevant for agency purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5514; 26 U.S.C. 6103(m)(2); 31 U.S.C. 3511, 3512, 3513, 3514, 3701, 3711, 3716, 3720; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain current rosters as subsidiary records for accounts receivable and cash accountability control; to provide monthly statements to customers; to provide ledger balances for activity financial statements; to prepare aged listing of accounts receivable, 30, 60, and 90 days; to answer inquiries of members on account status and specific transactions; to permit collection of debts owed to a nonappropriated fund instrumentality.

Records in this system of records are subject to use in authorized approved computer matching programs regulated under the Privacy Act of 1974 (5 U.S.C. 552a), as amended, for debt collection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USERS:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the General Accounting Office, the Department of the Treasury, Financial Management, and the Department of Justice for collection action for any delinquent account when circumstances warrant.

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of a debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to a DoD nonappropriated fund instrumentality.

To any other Federal agency for the purpose of affecting salary offset procedures under the provisions of 5 U.S.C. 5514, against a person employed by that agency when any creditor DoD nonappropriated fund instrumentality has a claim against the person.

To any other Federal agency including, but not limited to, the Internal Revenue Service and Office of Personnel Management for the purpose of effecting an administrative offset as defined at 31 U.S.C. 3701, of a debt.

To the Internal Revenue Service under the provision of 31 U.S.C. 3711(g)(9) to offset a tax refund due the taxpayer to collect or to compromise a Federal claim against the taxpayer.

To the Internal Revenue Service under the provisions of 26 U.S.C. 6103(m)(2) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim against the taxpayer.

Note: Disclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other DoD purpose or disclosed to another Federal, State or local agency which seeks to locate the same individual for its own debt collection purpose.

To any other Federal, State or local agency for the purpose of conducting an authorized computer matching program to identify and locate delinquent debtors for recoupment of debts owed a DoD nonappropriated fund instrumentality.

Any information in this system concerning an individual may be disclosed to a creditor Federal agency requesting assistance for the purpose of initiating debt collection action by way of a salary or administrative offset or tax refund offset against the individual.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the DFAS compilation of system of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this

system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING AND REPORTING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes and/or discs by account in numerical and alphabetical order; computer hard copy printouts filed in binders; copies of statements filed in folders.

RETRIEVABILITY:

By customer name and Social Security Number.

SAFEGUARDS:

Records are maintained in lock-type cabinets within storage areas accessible only to authorized personnel. Personnel having access are limited to those having an official need-to-know who have been trained in handling personal information subject to the Privacy Act.

RETENTION AND DISPOSAL:

Destroy 4 years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Support Activity, Defense Finance and Accounting Service—Indianapolis Center, ATTN: DFAS–IN/AQ, COL #337R, 8899 East 56th Street, Indianapolis, IN 46249–2130.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the custodian of nonappropriated funds activities at the installation where record is believed to exist. Official mailing addresses are available from the T3System manager.

INDIVIDUAL SHOULD FURNISH THEIR FULL NAME, SOCIAL SECURITY NUMBER, AND ACCOUNT NUMBER.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the custodian of nonappropriated funds activities at the installation where record is believed to exist. Official mailing addresses are available from the System manager.

Individual should furnish their full name, Social Security Number, and account number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From daily transaction registers/journals received from billeting officer, signal officer, and/or club officers; from the Department of the Treasury and the Defense Manpower Data Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–17301 Filed 8–31–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office; Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to Add Systems of Records; QNRO–24 Administrative Personnel Management Systems.

SUMMARY: The National Reconnaissance Office proposes to add a system of records to its inventory of record system subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 3, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the FOIA/Privacy Official, National Reconnaissance Office, Information Access and Release, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Contact the FOIA/NRO Privacy Official at (703) 227–9128.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 24, 2005, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 25, 2005.

Jeanette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

QNRO–24

SYSTEM NAME:

Administrative Personnel Management Systems.

SYSTEM LOCATION:

Organizational elements of the National Reconnaissance Office. 14675 Lee Road, Chantilly, VA 20151–175.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NRO civilian, military and contract personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal Information such as name, aliases or nicknames, social security number (SSN), date of birth, place of birth, home address, home telephone number, cell phone number, pager, education, spouse name, emergency contact information, vehicle and tag information, gender, nationality, citizenship, marital status, age, annual salary, wage type, ethnicity, disability, personal assignment code;

Work related information such as work e-mail address, accesses, parent organization, work telephone number, employee number, company, company address, position number and title, rank and date, agency/organization/office arrival and departure dates, assignment history, labor type, pay grade, network logon, location, career service, employee status (active/inactive), duty title, last assignment, badge numbers, personal classification number, space professional codes;

Performance related information such as awards, performance report due dates, raters, training history (course name, date, hours, course provider, certificate, program call), Contracting Officers Technical Representative (COTR) certifications and date,

Individual Development Plan (IDP) courses;

Travel related information such as government credit card number and expiration date, airline/hotel/rental car information and frequent flyer/club numbers, airline seating preference, miles from home to office, miles from home to airport.

Other information such as property checked out to individual, Air Force specialty code, report closeout dates; and any other information deemed necessary to manage personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. 401 *et seq.*; 5 U.S.C. 301 Departmental Regulations; E.O. 9397 (SSN); E.O. 12958, as amended; E.O. 12333.

PURPOSE(S):

To manage, supervise, and administer NRO personnel support programs relating to personnel management, official travel, awards, training, loan of property, security, emergency recall rosters and contact information; to support organizational and personnel reporting requirements; to support organizational and strategic planning and workforce modeling; and to respond to personnel or related taskings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the National Reconnaissance Office as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routines Uses'' published at the beginning of the National Reconnaissance Office's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and Automated Information Systems.

RETRIEVABILITY:

Information may be retrieved by an individual's name, Social Security Number (SSN), employee number, home or work telephone number, parent organization, company, and/or position number.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to staff whose official duties require such access.

RETENTION AND DISPOSAL:

Office administrative files, tracking and control files, and property inventory records are temporary; they are kept for 2 years from the date of the list or date of the report.

TRAINING ADMINISTRATIVE FILES ARE TEMPORARY; THEY ARE KEPT FOR 3 YEARS.

Supervisory files are temporary; they are kept for 1 year.

Security reports generated from information systems are temporary; they are kept for 5 years. Data files created consisting of summarized information are temporary; they are kept until no longer needed.

Reports created in response to any tasking from Congress, Community Management Staff, DoD and other external agencies are temporary; they are kept until superceded or when no longer needed.

Award related files such as recommendations, decisions, and announcements are temporary; they are kept for 25 years. Electronic documentation used to create the award related files is destroyed 180 days after the record copy has been produced.

SYSTEM MANAGER(S) AND ADDRESS:

Chiefs of organizational elements of the National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The National Reconnaissance Office rules for accessing records, for contesting contents and appealing initial agency determinations are published in National Reconnaissance Office Directive 110–3A and National Reconnaissance Office Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by documentation gathered in the background investigation, and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–17314 Filed 8–31–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability of exclusive or partially exclusive license to practice worldwide under the following pending patent.

Patent application Serial Numbers 11/152,340 and PCT/US05/21185 entitled ''Method and Apparatus for Removing Mercury and Mercury Containing Particles from Dental Waste Water'' filed on June 15 and 16, 2005. The present invention relates to the field of development of the removal of particulate metals, such as mercury or silver from dental waste-water using a self-contained mercury filtration cartridge for a single dental unit.

Patent application Serial Numbers 11/152,340 and PCT/US05/21185 entitled ''Hand-held Fluorescence Polarimeter'' filed on June 2, 2005. The present invention relates to a miniaturized, portable, hand-held apparatus for measuring the fluorescence polarization of a liquid sample.

Patent application Serial Numbers 11/108,867 and PCT/US05/13255 entitled ''Cloning and Expression of the Full Length 110 KDA Antigen of Orientia Tsutsugamushi to be Used as a Vaccine Component Against Scrub Typhus'' filed on April 19, 2005. The present invention relates to the protection against infection of Orientia tsutsugamushi.

Patent application Serial Number 60/666,591 entitled ''Use of EEG to Measure Cerebral Changes During Computer-based Motion Sickness-inducing Tasks'' filed on March 31, 2005. The present invention relates to an ability to pinpoint a specific neural marker that signals the early onset of motion sickness.

Patent application Serial Number 60/650,972 entitled ''Diagnostic Assay for Orientia Tsutsugamushi by Detection of Responsive Gene Expression ''filed on February 9, 2005. The present invention relates to a method for the diagnosis of *Orientia tsutsugamushi* infection by measuring the increased or decreased expression of specific human genes following infection by microarray or polymerase chain reaction analysis.

Patent application Serial Numbers 10/809,877 and PCT/US04/16880 entitled ''A Rapid Immunoassay of Anthrax Protective Antigen in Vaccine Cultures and Bodily Fluids by Fluorescence Polarization'' filed on July 27, 2004. The present invention relates to a competitive fluorescence method for estimating the concentration in a sample of *Bacillus anthracis* protein or specific antibody. The method contemplates the use of FLT, FRET or FP.

Patent application Serial Number 10/855,325 entitled ''A Method for the Rapid Diagnosis of Infectious Disease by Detection and Quantitation of Microorganism Induced Cytokines'' filed on May 28, 2004. The present invention relates to a method for the diagnosis of latent infectious disease, such as *Mycobacterium Tuberculosis*, by estimating, the concentration of cytokine due to antibody-cytokine interaction or by dimerization of the cytokine.

Patent application Serial Numbers 10/898,954 and PCT/US04/24252 entitled ''Bowel Preparation for Virtual Colonoscopy'' filed on December 1, 2003. The present invention relates to an immunogenic composition and method of immunizing a subject against malarial disease comprising administering a priming immunization preparation containing an alphavirus replicon expressing a gene encoding a malarial antigen or combination of antigens and subsequently administering to the subject a boosting immunization preparation containing the malarial antigen(s) or antigen expression system containing the antigen(s).

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Submit applications to the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave, Silver Spring, MD 20910–7500, telephone 301–319–7428 or e-mail at: *schlagelc@nmrc.navy.mil.*

SUPPLEMENTARY INFORMATION: Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

Dated: August 26, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–17398 Filed 8–31–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; NanoComm Systems LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to NanoComm Systems LLC, a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent Application No. 09/668,407: Multiple-Buffer Queuing of Data Packets with High Throughput Rate, Navy Case No. 84,834.//U.S. Patent Application No. 09/715,772: Multi-Thread Peripheral Processing Using Dedicated Peripheral Bus, Navy Case No. 84,781.//U.S. Patent Application No. 09/715,778: Prioritizing Resource Utilization in Multi-Thread Computing System, Navy Case No. 84,779.//U.S. Patent Application No. 09/833,578: System and Method for Data Forwarding in a Programmable Multiple Network, Navy Case No. 84,886.//U.S. Patent Application No. 09/833,580: System and Method for Instruction-Level Parallelism in a Programmable Network Processor Environment, Navy Case No. 84,888.//U.S. Patent Application No. 09/833,581: System and Method for Processing Overlapping Tasks in a Programmable Network Processor Environment, Navy Case No. 84,885.//U.S. Patent Application No. 09/859,150: Adaptive Control of Multiplexed Input Buffer Channels, Navy Case No. 84,831.//U.S. Patent Application No. 09/933,786: Shift Processing Unit, Navy Case No. 84,832 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 16, 2005.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Ave., SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: August 25, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–17409 Filed 8–31–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Steppingstones of Technology Innovation for Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327A.

Note: This notice includes one priority with two phases, and funding information for each phase of the competition.

Dates: Applications Available: September 1, 2005.

Deadline for Transmittal of Applications: See the chart in section II. Award Information section in this notice (Chart).

Deadline for Intergovernmental Review: See Chart.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: The Administration has requested $31,992,000 for the Technology and Media Services for Individuals with Disabilities program for FY 2006, of which we intend to use an estimated $3,000,000 for the Steppingstones of Technology Innovation for Children with Disabilities competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Funding information regarding each phase of the priority is listed in the Chart.

Maximum Award: Phase 1: $200,000 and Phase 2: $300,000. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Range of Awards: See Chart.

Estimated Average Size of Awards: See Chart.

Estimated Number of Awards: See Chart.

Project Period: See Chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provide support for captioning and video description that is appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv) and (v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Steppingstones of Technology Innovation for Children With Disabilities

Applicants must—

(a) Describe a technology-based approach for improving the results of early intervention, response-to-intervention assessment techniques, or preschool, elementary, middle school, or high school education for children with disabilities. The technology-based approach must be an innovative combination of new technology and additional materials and methodologies that enable the technology to improve educational, assessment, or early intervention results for children with disabilities;

(b) Present a justification, based on scientifically rigorous research or theory, that supports the potential effectiveness of the technology-based approach for improving the results of education, assessment, or early intervention for children with disabilities. Results studied under this priority must focus on child outcomes, rather than on parent or professional outcomes. Child outcomes can include improved academic or pre-academic skills, improved behavioral or social functioning, improved functional performance, etc., provided that valid and reliable measurement instruments are employed to assess the outcomes. Technology-based approaches intended for use by professionals or parents are not appropriate for funding under this priority unless child-level benefits are clearly demonstrated. Technology-based approaches for professional development will not be funded under this priority;

(c) Provide a detailed plan for conducting work in one of the following two phases:

(1) *Phase 1—Development:* Projects funded under Phase 1 must develop and refine a technology-based approach, and test its feasibility for use with children with disabilities. Activities under Phase I of the priority may include development, adaptation, and refinement of technology, materials, or methodologies. Activities under Phase 1 of the priority must include formative evaluation of usability and feasibility. The primary product of a project funded under Phase 1 should be a promising technology-based approach that is suitable for field-based evaluation of effectiveness in improving results for children with disabilities.

(2) *Phase 2—Research on Effectiveness:* Projects funded under Phase 2 must select a promising technology-based approach that has been developed and tested in a manner consistent with the criteria for activities funded under Phase 1, and subject the approach to rigorous field-based research to determine effectiveness in educational or early intervention settings. Approaches studied through projects funded under Phase 2 may have been developed with previous funding under Phase 1 of this priority or with funding from other sources. Phase 2 of this priority is primarily intended to produce sound research-based evidence that demonstrates the approach can improve educational or early intervention results for children with disabilities in a defined range of real world contexts.

Projects funded under Phase 2 of this priority must conduct research that poses a causal question and must employ randomized assignment to treatment and comparison conditions, unless a strong justification is made for why a randomized trial is not possible. If a randomized trial is not possible, the applicant must employ alternatives that substantially minimize selection bias or

allow it to be modeled. These alternatives include appropriately structured regression-discontinuity designs and natural experiments in which naturally occurring circumstances or institutions (perhaps unintentionally) divide people into treatment and comparison groups in a manner akin to purposeful random assignment. In their applications, applicants proposing to use an alternative system must (1) make a compelling case that randomization is not possible, and (2) describe in detail how the procedures will result in substantially minimizing the effects of selection bias on estimates of effect size. Choice of randomizing unit or units (*e.g.*, students, classrooms, schools) must be grounded in a theoretical framework. Observational, survey, or qualitative methodologies may complement experimental methodologies to assist in the identification of factors that may explain the effectiveness or ineffectiveness of the approach. Applications must provide research designs that permit the identification and assessment of factors impacting the fidelity of implementation. Mediating and moderating variables that are both measured in the practice or model condition and are likely to affect outcomes in the comparison condition must be measured in the comparison condition (*e.g.*, student time-on-task, teacher experience, and time in position).

Projects funded under Phase 2 of this priority must conduct research that is of sufficient power to provide convincing evidence of the effectiveness or ineffectiveness of the technology-based approach under study, at least within a defined range of settings. Applicants must provide documentation that available sample sizes, methodologies, and treatment effects are likely to result in conclusive findings regarding the effectiveness of the technology-based approach;

(d) Provide a plan for forming collaborative relationships with vendors and/or other dissemination or marketing resources to ensure that the technology-based approach is widely available if sufficient evidence of effectiveness has been obtained. Applicants should document the availability and/or participation of dissemination or marketing resources. Applicants are encouraged to plan these collaborative relationships early in their projects, even in Phase 1 (if applicable), but should refrain from widespread dissemination to practitioners until evidence of effectiveness has been obtained;

(e) Budget for the project director to attend an annual two-day Project Directors' meeting in Washington, DC, and another annual two-day trip to Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority to share information, and discuss findings and methods of dissemination; and

(f) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility. If the project produces instructional materials for dissemination, it must produce them in accessible formats, including complying with the National Instructional Materials Accessibility Standard (NIMAS) for textual materials.

Within this absolute priority, we intend to fund at least two projects led by a project director or principal investigator in the initial phase of his or her career. For purposes of this priority, the initial phase of an individual's career is considered to be the first three years after the individual completes and graduates from a doctoral program (*i.e.*, for FY 2006 awards, projects may support individuals who completed and graduated from a doctoral program no earlier than the 2003–2004 academic year). To qualify for this consideration, the applicant must explicitly state and document that the project director or principal investigator is in the initial phase of his or her career. At least 50 percent of the initial career researcher's time must be devoted to the project.

Within this absolute priority, we also intend to fund at least two projects focusing on technology-based approaches for children with disabilities, ages birth to age 3, and to fund at least two projects focusing on technology-based approaches to response-to-intervention assessment techniques.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of the IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $31,992,000 for the Technology and Media Services for Individuals with Disabilities program for FY 2006, of which we intend to use an estimated $3,000,000 for the Steppingstones of Technology Innovation for Children with Disabilities competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: Phase 1: $200,000 and Phase 2: $300,000. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

STEPPINGSTONES OF TECHNOLOGY INNOVATION FOR CHILDREN WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2006

CFDA number and name	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.327A—Steppingstones of Technology Innovation for Children with Disabilities:						
Phase 1—Development	10/18/2005	12/17/2005	$1,200,000	$100,000–$200,000	$200,000	6

STEPPINGSTONES OF TECHNOLOGY INNOVATION FOR CHILDREN WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2006—Continued

CFDA number and name	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
Phase 2—Research on Effectiveness	10/18/2005	12/17/2005	1,800,000	200,000–300,000	300,000	6

Project Period: Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2 will be funded for up to 24 months unless a compelling rationale is provided for funding up to 36 months.

Note: The Department of Education is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of the IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of the IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.327A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: September 1, 2005.

Deadline for Transmittal of Applications: See Chart.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: See Chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Steppingstones of Technology Innovation for Children with Disabilities-CFDA Number 84.327A is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Steppingstones of Technology Innovation for Children with Disabilities-CFDA Number 84.327A competition at: *http://www.grants.gov.* You must search for the downloadable application package

for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*) and provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327A) 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.327A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program. These measures will focus on: The extent to which projects are of high quality and are relevant to the needs of children with disabilities. Data on these measures will be collected from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

We will notify grantees of the performance measures once they are developed.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Tom Hanley, U.S. Department of Education, 400 Maryland Avenue, SW., room 4066, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7369.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: August 29, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–17448 Filed 8–31–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Impact Statement: Site Selection for the Expansion of the Strategic Petroleum Reserve

AGENCY: Department of Energy.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings.

SUMMARY: The Energy Policy Act of 2005 (EPACT), enacted on August 8, 2005, directs the Secretary of Energy to acquire petroleum to fill the Strategic Petroleum Reserve (SPR) to its authorized 1 billion-barrel capacity as expeditiously as possible, and, no later than 1 year after enactment, to select sites necessary to expand the SPR from its current 727 million-barrel capacity to 1 billion barrels. DOE has determined that the site selection and expansion required by EPACT constitute a major Federal action which may have a significant impact upon the environment within the meaning of the National Environmental Policy Act (NEPA). For this reason, DOE intends to prepare an environmental impact statement (EIS) to assess the proposed capacity expansion at three of the four existing SPR storage sites and the development of a new storage site in the Gulf Coast region.

DOE will prepare the EIS in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Parts 1500–1508) and the DOE NEPA regulations (10 CFR Part 1021).

DATES: DOE invites interested agencies, organizations, Native American tribes, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this notice in the **Federal Register** and will continue until October 14, 2005. Written and oral comments will be given equal weight and DOE will consider all comments received or postmarked by October 14, 2005, in defining the scope of the Draft EIS. Written comments postmarked or sent after this date will be considered to the degree practicable.

DOE invites oral comments and suggestions at public scoping meetings

to which agencies, organizations, Native American tribes, and the general public are invited. The dates for these meetings are as follows:

1. October 4, 2005; 7 p.m. to 9 p.m.; Hattiesburg, Mississippi
2. October 5, 2005; 7 p.m. to 9 p.m.; Pascagoula, Mississippi
3. October 6, 2005; 7 p.m. to 9 p.m.; Houma, Louisiana
4. October 11, 2005; 7 p.m. to 9 p.m.; Lake Jackson, Texas

The locations of the public scoping meetings were selected based on their proximity to the locations of proposed new oil storage sites or related major ancillary offsite facilities under consideration. If an agency, organization, or a member of the general public desires to have a scoping meeting near one of the proposed expansion sites, please contact Donald Silawsky at the address listed in the **ADDRESSES** section of this Notice. If DOE decides to host a public scoping meeting near one of the proposed expansion sites, DOE will publish an amendment to this Notice and other public announcements.

ADDRESSES: Written comments or suggestions on the scope and content of the EIS and requests to speak at the scoping meetings should be directed to: Donald Silawsky, Office of Petroleum Reserves (FE–47), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0301; telephone: (202) 586–1892; fax: (202) 586–4446; or electronic mail at *Donald.Silawsky@hq.doe.gov.* Envelopes and the subject line of e-mails or faxes should be labeled ''Scoping for the SPR EIS.'' Please note that conventional mail to DOE may be delayed by anthrax screening.

The locations of the scoping meetings are as follows:

1. C.E. Roy Community Center, 300 East 5th Street, Hattiesburg, Mississippi
2. La Font Inn, 2703 Denny Avenue, Pascagoula, Mississippi
3. Ramada Inn, 1400 West Tunnel Boulevard, Houma, Louisiana
4. Cherotel Brazosport Hotel and Conference Center, 925 Hwy 332, Lake Jackson, Texas

FOR FURTHER INFORMATION, CONTACT: For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Donald Silawsky by any of the means listed in the **ADDRESSES** section of this notice. Additional information may also be found on the DOE Fossil Energy website at *http://www.fe.doe.gov.*

For further information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; telephone: 202–586–4600; fax: 202–586–7031; or leave a toll-free message at: 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

The SPR is a national stockpile of petroleum, established pursuant to the Energy Policy and Conservation Act of 1975, to protect the United States from interruption in petroleum supplies that would be detrimental to our energy security, national security, and economy. The SPR currently consists of four underground oil storage facilities along the Gulf Coast, two in Louisiana (Bayou Choctaw and West Hackberry) and two in Texas (Big Hill and Bryan Mound), and an administrative facility in New Orleans, Louisiana. At the storage facilities, crude oil is stored in caverns constructed by the solution mining of rock salt formations (salt domes). The four SPR facilities have a current storage capacity of 727 million barrels and a current inventory of 700 million barrels (August 2005).

DOE conducted planning activities for the expansion of the SPR to 1 billion barrels under prior Congressional directives in 1988 and 1990. The expansion planning directive in 1988 resulted in an initial plan for expansion entitled *Report to Congress on Expansion of the Strategic Petroleum Reserve to One Billion Barrels.* The expansion planning directive in 1990 resulted in a *Report to Congress on Candidate Sites for Expansion of the Strategic Petroleum Reserve to One Billion Barrels* and the preparation of a Draft Environmental Impact Statement, DOE/EIS–0165–D in 1992, which assessed five candidate sites for the expansion of the SPR to one billion barrels: Big Hill, Texas; Stratton Ridge, Texas; Weeks Island, Louisiana; Cote Blanche, Louisiana; and Richton, Mississippi. (DOE/EIS–0165–D is available on the DOE Fossil Energy website at *http://www.fe.doe.gov.)*

Section 301(e) of EPACT directs the Secretary of Energy to ''acquire petroleum in quantities sufficient to fill the [SPR] to the 1,000,000,000 barrel capacity authorized under section 154(a) of [EPCA].'' In addition, section 303 of EPACT directs that: ''Not later than 1 year after the date of enactment of this Act, the Secretary shall complete a proceeding to select, from sites that the Secretary has previously studied, sites necessary to enable acquisition by the Secretary of the full authorized volume of the Strategic Petroleum Reserve. In such proceeding, the Secretary shall first consider and give preference to the five sites which the Secretary previously addressed in the Draft Environmental Impact Statement, DOE/EIS–0165–D. However, the Secretary, in his discretion may select other sites as proposed by a State where a site has been previously studied by the Secretary to meet the full authorized volume of the Strategic Petroleum Reserve.''

In a preliminary review of the five sites addressed in the Draft DOE/EIS–0165–D, DOE has concluded that the Weeks Island site and the Cote Blanche site are no longer viable alternatives due to the sale of DOE's Weeks Island oil pipeline in 1998 and its subsequent conversion to natural gas transmission. This pipeline was required for oil distribution from these sites. DOE proposes to eliminate these sites from further consideration.

In addition to the sites addressed in Draft DOE/EIS–0165–D, DOE proposes to include potential expansions to SPR's West Hackberry and Bayou Choctaw, Louisiana, storage sites as well as two potential new storage site candidates—Clovelly and Chacahoula, Louisiana. These sites have been previously studied by DOE to meet the authorized expansion to 1 billion barrels. The proposed expansions of the two existing SPR sites would utilize existing infrastructure and pipelines of each oil storage site, which would lower development time and cost. The two potential new SPR storage site candidates, Clovelly or Chacahoula, Louisiana, would provide distribution capabilities to Gulf Coast refining regions which are not adequately served by the existing SPR storage sites.

As directed by EPACT, DOE will consider other sites as proposed by the States where a site has been previously studied by the Secretary to meet the full authorized volume of the Strategic Petroleum Reserve.

Proposed Action

The proposed action is to expand SPR storage capacity to one billion barrels by expanding existing sites at West Hackberry (up to an additional 15 million barrels), Bayou Choctaw (up to an additional 30 million barrels), and Big Hill (up to an additional 108 million barrels), and by developing one new oil storage site with up to 160 million barrels of storage capacity at either Clovelly or Chacahoula, Louisiana; Richton, Mississippi; or Stratton Ridge, Texas.

For both existing site expansions and a new site, DOE would create oil storage caverns in rock salt formations from 1,000 to 6,000 feet below ground surface. Caverns would be constructed through a technique known as solution mining or leaching using fresh or salt water. Leaching generates approximately 80 million barrels of concentrated brine wastewater per 10 million barrels in cavern space created. This wastewater would be disposed of either by pipeline to diffusers in the Gulf of Mexico or by an array of underground injection wells.

All SPR salt dome storage sites require a raw water system for cavern leaching and oil drawdown, a brine setting and disposal system, a crude oil injection/distribution system, a fixed fire protection system, and a central control system. Major surface buildings and structures would include an electrical substation, a control center, an administration building, security operations buildings, communication structures, a covered laydown area, a fire house, and a warehouse for storage and maintenance. To supply the water to a new site, a raw water intake structure would be constructed offsite in a surface water body. The water and brine systems for leaching caverns would be sized to supply up to 1.2 million barrels per day and the crude oil distribution system would be designed for drawdown up to one million barrels per day. The proposed expansions of existing SPR facilities would, in general, use the existing infrastructure and pipelines of the oil storage site. Expanding the Big Hill site, however, would require additional pumping systems to increase the site's drawdown rate and the construction of an additional pipeline to Nederland, Texas, for oil distribution.

The development of a new oil storage site would include the construction of offsite infrastructure and pipelines for water supply, brine disposal, and for crude oil receipt and distribution. An SPR storage site at Clovelly would be co-located on the salt dome with the Louisiana Offshore Oil Port (LOOP) petroleum storage terminal and would use the existing commercial oil distribution infrastructure. An SPR storage site at Chacahoula would require a 58-mile pipeline for brine disposal to the Gulf of Mexico, and a 50-mile pipeline for oil distribution to the LOOP petroleum storage terminal at Clovelly, and/or a 21-mile pipeline to the marine facilities in St. James, Louisiana. An SPR storage site at Richton would require two, co-located pipelines to Pascagoula, a 96-mile brine disposal pipeline to the Gulf of Mexico and a 83-mile oil distribution pipeline; the construction of a 118-mile oil distribution pipeline to the Capline Interstate Pipeline injection station at Liberty, Mississippi; and the construction of new marine oil distribution facilities (docks and storage tanks) in the Port of Pascagoula. An SPR storage site at Stratton Ridge would require an 11-mile brine disposal pipeline and a 37-mile oil distribution pipeline to Texas City, Texas.

Alternatives

DOE is considering developing each of the proposed new oil storage sites (Clovelly, Louisiana; Chacahoula, Louisiana; Richton, Mississippi: or Stratton Ridge, Texas) as an independent alternative. The assessment of each alternative site will include consideration of ancillary offsite facilities and alternative pipeline routes to crude oil transportation and distribution complexes. As part of each new site alternative, DOE will assess a range of alternative capacity expansions of the three existing oil storage sites. DOE will review an 80, 96, or 108 million barrel capacity expansion at Big Hill, a no expansion or a 15 million barrel capacity expansion at West Hackberry, and a 20 or 30 million barrel capacity expansion at Bayou Choctaw. This will allow DOE to assess a wide range of alternative configurations to achieve the 1 billion barrel storage capacity, as mandated by the Energy Policy Act of 2005. In addition, DOE will assess the no action alternative in accordance with the CEQ NEPA regulations (40 CFR 1502.14).

Identification of Environmental Issues

The purpose of this notice is to solicit comments and suggestions for consideration in the preparation of the EIS. As background for public comment, this notice contains a list of potential environmental issues that DOE has tentatively identified for analysis. This list, which DOE developed from preliminary scoping of the proposed expansion and similar projects, is not intended to be all-inclusive or to imply any predetermination of impacts. Instead, it is presented to facilitate public comment on the planned scope and content of the EIS. Additions to or deletions from this list may occur as a result of the public scoping process. The preliminary list of potential environmental issues that may be analyzed in the EIS includes the following:

(1) Air Quality: The effects of construction and operation of the proposed new SPR facilities and expansion at existing sites on local and regional air quality.

(2) Water Resources: The effects of construction (*e.g.*, construction in water bodies and brine disposal) and operation (*e.g.*, raw water intake and potential spills) on the quantity and quality of local and regional marine, freshwater, and groundwater systems.

(3) Ecological Resources: The effects of construction and operation on terrestrial and aquatic plants and animals, including state- and Federally-listed threatened and endangered species, and other protected resources (*e.g.*, wetlands and essential fish habitat).

(4) Land Use: The effects of allocating land resources for the SPR rather than for other uses (*e.g.*, agriculture, commercial, or recreation).

(5) Geological Resources: The effects on the local geology and soils including halokinesis or cavern ''creep,'' subsidence, mixing of soil horizons, and compaction.

(6) Public Health and Safety: The effects of construction and operation on public health and safety, including potential incidental spills and releases.

(7) Socioeconomics: The effects of a potential influx of workers and the potential increase in demand for local services.

(8) Cultural Resources: The potential effects on historical, archaeological, and culturally important sites.

(9) Environmental Justice: The potential for disproportionately high and adverse effects on populations protected under Executive Order 12898.

Scoping Process

To ensure that all issues related to this proposal are addressed, DOE will conduct an open process to define the scope and content of the EIS. Interested agencies, organizations, Native American tribes, and the members of the public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be considered.

Written comments should be sent to DOE as described in the **ADDRESSES** section above. Public scoping meetings will be held at the locations, dates, and times listed in the **DATES** and **ADDRESSES** sections. These meetings will be informal. A presiding officer designated by DOE will establish procedures governing the conduct of the meetings. The meetings will not be conducted as evidentiary hearings, and those who choose to make statements will not be cross-examined by other speakers. To request time to speak at the public scoping meetings, please contact Donald

Silawsky via mail, fax, or e-mail as listed in the **ADDRESSES** section of this Notice. Persons may also sign up to speak before each meeting at the reception desk at the entrance to the meeting.

To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to speak, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization when they sign up to speak.

A complete transcript of the public scoping meetings will be retained by DOE and made available to the public for review via the DOE Web site at *http://www.fe.doe.gov* and during business hours at the Department of Energy, Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0173, and at the Department of Energy SPR Project Management Office, 900 Commerce Road East, New Orleans, LA 70123–3406. Additional copies of the public scoping meetings transcripts will be made available during normal business hours at the following locations:

Terrebonne Parish, LA, Terrebonne Parish Public Library, 151 Civic Center Blvd., Houma, LA 70360.

Lafourche Parish LA, Martha Sowell Utley Memorial Library, Thibodaux Branch, 314 St. Mary Street, Thibodaux, LA 70301–2620.

Jackson County, MS, Pascagoula Public Library, 3214 Pascagoula St, Pascagoula, MS 39567.

Perry County, MS, Richton Public Library, 210 N Front St, Richton, MS 39476.

Brazoria County, TX, Lake Jackson Library, 250 Circle Way, Lake Jackson, TX 77566.

Draft EIS Schedule and Availability

The draft EIS is scheduled to be issued in early spring 2006. The availability of the Draft EIS and dates for public hearings soliciting comments on it will be announced in the **Federal Register** and local media. Comments on the Draft EIS will be considered in preparing the Final EIS. The Draft EIS will be made available for public inspection at the libraries identified above.

Those interested parties who do not wish to submit comments at this time, but who would like to receive a copy of the Draft EIS and other project materials, please contact Donald Silawsky as provided in the **ADDRESSES** section of this notice.

Issued in Washington, DC, on August 29, 2005.

John Spitaleri Shaw,

Assistant Secretary for Environment, Safety and Health.

[FR Doc. 05–17447 Filed 8–31–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–131–000]

Dynegy Holdings, Inc., et al.; Notice of Filing

August 25, 2005.

Take notice that on August 23, 2005, Dynegy Holdings, Inc. (Dynegy Holdings), Dynegy Power Corp. (DPC), Bluegrass Generation Company, L.L.C., Calcasieu Power, LLC, Dynegy Danskammer, L.L.C., Dynegy Roseton, L.L.C., Heard County Power, L.L.C., Renaissance Power, L.L.C., Riverside Generating Company, L.L.C., Rockingham Power, L.L.C., Rocky Road Power, LLC, Rolling Hills Generating, L.L.C., and DMT Holdings, Inc. (DMT Holdings) (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities pursuant to an intra-corporate reorganization that results in DPC, now a direct wholly-owned subsidiary of Dynegy Holdings, becoming an indirect wholly-owned subsidiary of Dynegy Holdings with DMT Holdings, also a direct wholly-owned subsidiary of Dynegy Holdings, being inserted as DPC's direct upstream parent. (Transaction). Applicants state that the Transaction as an intra-corporate restructuring would be accomplished pursuant to authorizing board and shareholder resolutions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 13, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4791 Filed 8–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–96–000]

Hillcrest Wind, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 25, 2005.

Take notice that on, August 17, 2005, Hillcrest Wind, LLC (Hillcrest) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Hillcrest states that no state regulatory approvals or determinations were sought or received with respect to the facility or the power purchase agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the

comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eeSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 7, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4792 Filed 8–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–97–000]

Indian River Power LLC; Notice of Application for Redetermination of Exempt Wholesale Generator Status

August 25, 2005.

Take notice that on August 22, 2005, Indian River Power LLC (Indian River) filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 12, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4793 Filed 8–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL05–137–000, EL04–110–003, EL04–113–003, EL04–115–005]

New York Independent System Operator, Inc.; Notice of Filing

August 26, 2005.

Take notice that on July 27, 2005, the New York Independent System Operator, Inc. (NYISO), tendered for filing an informational report concerning two residual issues involving Transmission Congestion Contract calculation and database errors.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 2, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4795 Filed 8–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–230–012, ER01–3155–010, ER01–1385–019, EL01–45–018]

New York Independent System Operator, Inc.; Notice of Filing

August 25, 2005.

Take notice that on August 8, 2005, New York Independent System Operator, Inc., (NYISO) submitted its fourth quarterly report pursuant to the NYISO's commitment in its Request for Rehearing, and the Commission's directive in its Order on Rehearing issued June 24, 2005 in Docket Nos. ER04–230–006, ER01–3155–006, ER01–1385–015, and EL01–45–014.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 1, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4796 Filed 8–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–1123–001]

New York Independent System Operator, Inc.; Notice of Filings

August 26, 2005.

Take notice that on August 1, 2005, August 16, 2005 and August 18, 2005, the New York Independent System Operator, Inc., (NYISO) submitted compliance filings pursuant to the Commission's order issued July 19, 2005, 112 FERC ¶ 61,075 (2005).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 8, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4797 Filed 8–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–98–000]

TAIR Windfarm, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 25, 2005.

Take notice that on August 22, 2005, TAIR Windfarm, LLC (TAIR) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 12, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4794 Filed 8–31–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 26, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3125–002.

Applicants: Minergy Neenah, L.L.C.

Description: Minergy Neenah, L.L.C. submits First Revised Sheet No. 3, FERC Electric Tariff, Original Volume No. 1 to comply with the Commission's letter order issued 7/22/05 in Docket No. ER99–3125–001, 112 FERC ¶ 61,090 (2005).

Filed Date: 08/22/2005.

Accession Number: 20050824–0170.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2005.

Docket Numbers: ER99–3168–004; ER05–92–002; ER02–2453–003; ER03–382–004; ER02–2451–003; ER02–2450–

003; ER05–143–002; ER02–2452–003; ER00–2508–002; ER00–1749–003; ER02–2449–003; ER99–1801–008; ER01–3035–006; ER02–1762–004; ER04–944–002; ER01–852–005.

Applicants: Astoria Generation Company, L.P.; Orion Power MidWest, L.P., Reliant Energy Coolwater, Inc.; Reliant Energy Electric Solutions, LLC; Reliant Energy Ellwood, Inc.; Reliant Energy Etiwanda, Inc.; Reliant Energy Florida, LLC; Reliant Energy Mandalay, Inc.; Reliant Energy Mid-Atlantic Power Holdings, LLC; Reliant Energy New Jersey Holdings, LLC; Reliant Energy Ormond Beach, Inc.; Reliant Energy Services, Inc.; Reliant Energy Seward, LLC; Reliant Energy Solutions East, LLC; Reliant Energy Wholesale Generation, LLC; Twelvepole Creek, LLC.

Description: The above referenced applicants submit amended tariff sheets to correct typographical errors in previously-filed market behavior rules.

Filed Date: 08/18/2005.

Accession Number: 20050824–0225.

Comment Date: 5 p.m. Eastern Time on Thursday, September 8, 2005.

Docket Numbers: ER02–2042–003.

Applicants: UGI Utilities, Inc.

Description: UGI Utilities, Inc. submits its triennial market-power update and revised tariff sheets.

Date: 08/22/2005.

Accession Number: 20050824–0175.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2005.

Docket Numbers: ER04–230–014.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits an amendment to its compliance filing submitted on 6/1/05 in response to the Commission's deficiency letter issued 7/13/05 in Docket No. ER04–230–010.

Filed Date: 08/12/2005.

Accession Number: 20050824–0176.

Comment Date: 5 p.m. Eastern Time on Friday, September 2, 2005.

Docket Numbers: ER05–285–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits its refund report filed pursuant to the Commission's 5/31/05 Order in Docket Nos. ER05–285–000 and 001.

Filed Date: 08/22/2005.

Accession Number: 20050824–0174.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2005.

Docket Numbers: ER05–666–004.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits its compliance filing, which provides revisions to its open access transmission tariff pursuant to the Commission's Order issued 7/21/05, 112 FERC ¶ 61,100.

Filed Date: 08/22/2005.

Accession Number: 20050824–0169.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2005.

Docket Numbers: ER05–1139–001; ER01–468–004; ER05–1140–001; ER00–3621–005; ER05–1141–001; ER00–3746–007; ER05–1142–002.

Applicants: Dominion Energy Marketing, Inc.; Dominion Nuclear Connecticut, Inc.; Dominion Nuclear Marketing III, L.L.C.; Kincaid Generation, L.L.C.

Description: The above referenced applicants submit revised tariff sheets amending two collective 6/24/05 filings.

Filed Date: 08/18/2005.

Accession Number: 20050824–0013.

Comment Date: 5 p.m. Eastern Time on Thursday, September 8, 2005.

Docket Numbers: ER05–1251–001.

Applicants: Madison Windpower, LLC.

Description: Madison Windpower, LLC submits a supplement to its Notice of Cancellation filed on 7/26/05 in Docket No. ER05–1251–000.

Filed Date: 08/22/2005.

Accession Number: 20050824–0173.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2005.

Docket Numbers: ER05–1301–001.

Applicants: Cogentrix Energy Power Marketing, Inc.

Description: Cogentrix Energy Power Marketing, Inc. submits a supplement to its Notice of Cancellation filed on 8/8/05 in Docket No. ER05–1301–000.

Filed Date: 08/22/2005.

Accession Number: 20050824–0172.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2005.

Docket Numbers: ER05–1366–000; ER05–1367–000; ER05–1368–000; ER05–1369–000; ER05–1370–000; ER05–1371–000; ER05–1372–000; ER05–1373–000; ER05–1374–000; ER05–1375–000; ER05–1376–000.

Applicants: Cincinnati Gas & Electric Company; PSI Energy, Inc.; Union Light Heat & Power Company; Cinergy Marketing & Trading, LP; Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; CinCap IV, LLC; CinCap V, LLC; Cinergy Capital & Trading, Inc.; Cinergy Power Investments, Inc.; St. Paul Cogeneration, LLC.

Description: The above referenced applicants submits their initial and amended market based rate tariffs, to implement certain organizational changes.

Filed Date: 08/19/2005.

Accession Number: 20050824–0237.

Comment Date: 5 p.m. Eastern Time on Friday, September 9, 2005.

Docket Numbers: ER05–1379–000.

Applicants: American Electric Power Services Corporation.

Description: American Electric Power Services Corporation, as agent for its affiliate Appalachian Power Company, submits an Interconnection and Local Delivery Service Agreement with Old Dominion Electric Cooperative.

Filed Date: 08/22/2005.

Accession Number: 20050824–0230.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2005.

Docket Numbers: ER05–1380–000.

Applicants: American Electric Power Services Corporation.

Description: American Electric Power Services Corporation, as agent for its affiliate Indiana Michigan Power Company, submits a revision to the Interconnection and Local Delivery Service Agreement No. 1253 with Hoosier Energy Rural Electric Cooperative, Inc.

Filed Date: 08/19/2005.

Accession Number: 20050824–0229.

Comment Date: 5 p.m. Eastern Time on Friday, September 9, 2005.

Docket Numbers: ER05–1381–000.

Applicants: Lyon Rural Electric Cooperative.

Description: Lyon Rural Electric Cooperative submits notification of withdrawal of its Rate Schedule No. 1.

Filed Date: 08/22/2005.

Accession Number: 20050824–0227.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2005.

Docket Numbers: ER05–1382–000.

Applicants: McDonough Power Cooperative.

Description: McDonough Power Cooperative submits notification of withdrawal of its Rate Schedule No. 1.

Filed Date: 08/22/2005.

Accession Number: 20050824–0226.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2005.

Docket Numbers: ER05–1383–000; ES003–9–000; ES00–22–000.

Applicants: Sun River Electric Cooperative, Inc.

Description: Sun River Electric Cooperative Inc. submits notification of withdrawal of its Rate Schedule No. 1.

Filed Date: 08/16/2005.

Accession Number: 20050824–0177.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern Time on the specified comment date. It

is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4790 Filed 8–31–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0049; FRL–7964–3]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; The Consolidated Federal Air Rule for SOCMI (Renewal), ICR Number 1854.04, OMB Number 2060–0443

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 3, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0049, to (1) EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marcia B. Mia, Compliance Assessment and Media Programs Division, Office, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–7042; fax number: (202) 564–0050; e-mail address: *mia.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 1, 2004 (69 FR 69909), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2004–0049, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: The Consolidated Federal Air Rule for SOCMI (Renewal)

Abstract: This information collection request (ICR) is for the Consolidated Federal Air Rule (CAR) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and its referencing subparts. EPA will use this information to ensure compliance with the provisions in the CAR and its referencing subparts.

All existing sources must be in compliance with the requirements of the CAR and/or its referencing subparts within three years of the effective date (*i.e.*, promulgation date) of the appropriate standard for the affected source. All new sources must be in compliance with the requirements of the CAR and/or its referencing subparts upon startup or the promulgation date of standards for an affected source, whichever is later. Compliance is assumed through initial performance testing or design analysis, as appropriate, and ongoing compliance is demonstrated through parametric monitoring. Types of parameters monitored are incinerator temperature, scrubber flow rate, carbon adsorber regeneration frequency as well as others. The appropriate parameter to monitor depends on the type of control device with which the owner or operator chooses to comply.

The recordkeeping and reporting requirements in the standards ensure compliance with the applicable regulations which were promulgated in accordance with the Clean Air Act (CAA). The collected information is also used for targeting inspections and as evidence in legal proceedings.

Performance tests are required in order to determine an affected facility's initial capability to comply with the emission standards. In addition, continuous emission monitors are used to ensure that the respondent complies with the standards at all times. During the performance test, a record of the operating parameters under which compliance was achieved may be recorded and used to determine compliance in place of a continuous emission monitor.

The notifications required in the standards are used to inform the Agency or delegated authority when a source becomes subject to the requirements of the regulations. The reviewing authority may then inspect the source to ensure that the pollution control devices are properly installed and operated, that leaks are detected and repaired, and that the standards are met. The performance test may also be observed.

The required reports are used to determine periods of excess emissions, identify problems at the facility, verify operation/maintenance procedures, and for compliance determinations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 180 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities in the Synthetic Organic Chemical Manufacturing Industry.

Estimated Number of Respondents: 3,913.

Frequency of Response: Initially, annually, semiannually and on occasion.

Estimated Total Annual Hour Burden: 2,057,270.

Estimated Total Annual Costs: $226,718,704, which includes $3,404,000 in annualized Capital/startup costs, $91,956,000 annual O&M costs, and $131,358,704 in Respondent Labor Costs.

Changes in the Estimates: There is a decrease in burden of 108,330 hours from the most recently approved ICR. Some 35,758 hours of the changes are a program change for NSPS subparts Kb, VV, DDD, III, NNN and RRR, which no longer require Notifications of Anticipated Startup. The balance of the changes (72,572 hours) are adjustments due primarily to correction of errors and the addition of clerical and managerial hours to the burden calculation. There is a corresponding decrease in the average hours per response of 29 hours; from 209 hours per response to 180 hours per response. There was a decrease of $4,561,000 in the Total Capital/Startup and Operation and Maintenance Costs due to an error in the previous ICR regarding the costs for monitoring equipment when determining Total Capital/Startup and Operation and Maintenance Costs for subpart Kb and subpart G of the Hazardous Organic National Emission Standards for Hazardous Air Pollutants (HON). The cost for certain control devices was inadvertently included in the previous ICR.

Dated: August 26, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–17436 Filed 8–31–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7964–5]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet in September 2005. This is an open meeting. The meeting will include updates on workgroup activities, a discussion of the recommendations made by the National Academy of Sciences regarding mobile source air pollution control, and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting, as well as the minutes from the previous (March 2005) meeting will be posted on the Subcommittee's Web site: *http://www.epa.gov/air/caaac/mobile_sources.html.* MSTRS listserver subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserver, go to *https://lists.epa.gov/cgi-bin/lyris.pl?enter=mstrs.* The site contains instructions and prompts for subscribing to the listserver service.

DATES: Tuesday, September 13, 2005 from 9 a.m. to 5 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn and Suites, 625 First Street, Alexandria, VA 22314, (703) 548–6300. Shuttle buses are available between Washington Reagan National Airport and the Reagan National Airport Metro Station and the hotel.

FOR FURTHER INFORMATION CONTACT: *For technical information:* Dr. L. Joseph Bachman, Designated Federal Officer, Transportation and Regional Programs Division, Mailcode 6406J, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; Ph: (202) 343–9373; e-mail, *bachman.joseph@epa.gov.*

For logistical and administrative information: Ms. Cassandra Wallace,

FACA Management Officer, U.S. EPA, Transportation and Regional Programs Division, Mailcode 6406J, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; (202) 343–9403.

Background on the work of the Subcommittee is available at *http://transaq.ce.gatech.edu/epatac/,* and more current information is found at: *http://www.epa.gov/air/caaac/mobile_sources.html.*

Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Dr. Bachman at the address above by September 6, 2005. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

Dated: August 26, 2005.

Karl J. Simon,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 05–17433 Filed 8–31–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7964–4]

Notice of Final Decision To Grant Vickery Environmental, Incorporated a Modification of an Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 Regarding Injection of Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on a request to modify an exemption from the Hazardous and Solid Waste Amendments of the Resource Conservation and Recovery Act.

SUMMARY: Notice is hereby given by the Environmental Protection Agency (EPA or Agency) that a modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to Vickery Environmental, Inc. (VEI) of Vickery, Ohio. This modification allows VEI to continue to inject RCRA-regulated hazardous wastes designated as K181 wastes which will be banned from land disposal on August 23, 2005, as a result of regulations promulgated in the **Federal Register** (FR) on February 24, 2005 (70 FR 9138 *et seq.*) into four Class I injection wells at the Vickery, Ohio, facility. As required by 40 CFR part 148, VEI has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone utilized by VEI's waste disposal facility located near Vickery, Ohio, for as long as the newly-exempted waste remains hazardous. This decision constitutes a final Agency action for which there is no administrative appeal.

DATES: This action is effective as of August 23, 2005.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish, Lead Petition Reviewer, USEPA, Region 5, telephone (312) 886–2939. Copies of the petition and all related pertinent information are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative record.

SUPPLEMENTARY INFORMATION:

I. Background

Chemical Waste Management (CWM), the predecessor of VEI, submitted a petition for an exemption from the restrictions on land disposal of hazardous wastes on January 19, 1988. Revised documents were received on December 4, 1989, and several supplemental submittals were subsequently made. The exemption was granted on August 7, 1990. On September 12, 1994, CWM submitted a petition to modify the exemption to include wastes bearing 23 additional RCRA wastes codes. Region 5 reviewed documents supporting the request and granted the modification of the exemption on May 16, 1995. A notice of the modification appeared on June 5, 1995, at 60 FR 29592 *et seq.* On April 9, 1996, CWM submitted a petition to again modify the exemption to allow 91 additional RCRA waste codes. Region 5 reviewed documents supporting the request and granted the modification on the exemption on June 24, 1996. A notice of the modification appeared on July 15, 1996, at 61 FR 36880 *et seq.* Again on May 13, 1997, CWM submitted a request to add 11 waste codes to the list. Region 5 reviewed the evidence submitted by CWM and granted the request. Notice of the approval appeared on August 12, 1997 (63 FR 43109). On October 13, 1997, CWM notified the EPA that the name of the operator of the Vickery facility would become Waste Management of Ohio (WMO). This change was acknowledged by EPA through a letter added to the Administrative Record on November 10, 1997. On August 28, 1998, WMO requested that two additional wastes codes be approved for injection. Notice of the approval appeared on December 10, 1998 (63 FR 68284). In the same year, on November 5, 1998, WMO submitted a petition to exempt four additional waste codes. Approval of this petition appeared on February 10, 1999 (64 FR 6650). On January 24, 2000, Waste Management of Ohio informed EPA of a corporate reorganization and subsequent name change from Waste Management of Ohio to Vickery Environmental, Inc. This change was acknowledged by EPA through a letter added to the Administrative Record on March 9, 2000. On March 20, 2001, VEI requested that two wastes, designated as K174 and K175, be added to the list of wastes exempted for injection at VEI. This request was approved on May 23, 2001, and notice of the request appeared in the **Federal Register** on April 25, 2001 (66 FR 28464–28466). On January 31, 2002, WMO requested that four additional wastes codes be approved for injection. Notice of the approval appeared on April 29, 2004 (67 FR 20971).

The rule promulgated on February 24, 2005, bans K181 from injection after August 23, 2005, unless VEI's exemption is modified to allow injection of this waste. As a K-coded waste, the code represents a number of chemicals. Some of these have already been approved for injection at Vickery under other waste codes. VEI estimated diffusion rates for constituents not previously approved for injection using a method which Region 5 has previously accepted. The diffusion rates are lower than that of the chloride ion, the diffusion rate of which was used to define the edge of the waste plume at VEI. After review of the material submitted and verification of the calculations of diffusion rate, the EPA has determined, as required by 40 CFR 148.20(f), that there is a reasonable degree of certainty that the hazardous constituents contained in the waste bearing the code to be banned will behave hydraulically and chemically like wastes for which VEI was granted its original exemption and will not migrate from the injection zone in hazardous concentrations within 10,000 years. The injection zone is the Mt. Simon Sandstone and the Rome, Conasauga, Kerbel, and Knox Formations. The confining zone is comprised of the Wells Creek and Black River Formations.

List of RCRA Waste Codes Approved for Injection:

D001	F009	K033	K112	P011	P070	P191	U042	U095	U148	U203	U375
D002	F010	K034	K113	P012	P071	P192	U043	U096	U149	U204	U376
D003	F011	K035	K114	P013	P072	P194	U044	U097	U150	U205	U377
D004	F012	K036	K115	P014	P073	P196	U045	U098	U151	U206	U378
D005	F019	K037	K116	P015	P074	P197	U046	U099	U152	U207	U379
D006	F020	K038	K117	P016	P075	P198	U047	U101	U153	U208	U381
D007	F021	K039	K118	P017	P076	P199	U048	U102	U154	U209	U382
D008	F022	K040	K123	P018	P077	P201	U049	U103	U155	U210	U383
D009	F023	K041	K124	P020	P078	P202	U050	U105	U156	U211	U384
D010	F024	K042	K125	P021	P081	P203	U051	U106	U157	U213	U385
D011	F025	K043	K126	P022	P082	P204	U052	U107	U158	U214	U386
D012	F026	K044	K131	P023	P084	P205	U053	U108	U159	U215	U387
D013	F027	K045	K132	P024	P085	U001	U055	U109	U160	U216	U389
D014	F028	K046	K136	P026	P087	U002	U056	U110	U161	U217	U390
D015	F032	K047	K140	P027	P088	U003	U057	U111	U162	U218	U391
D016	F034	K048	K141	P028	P089	U004	U058	U112	U163	U219	U392
D017	F035	K049	K142	P029	P092	U005	U059	U113	U164	U220	U393
D018	F037	K050	K143	P030	P093	U006	U060	U114	U165	U221	U394
D019	F038	K051	K144	P031	P094	U007	U061	U115	U166	U222	U395
D020	F039	K052	K145	P033	P095	U008	U062	U116	U167	U223	U396
D021	K001	K060	K147	P034	P096	U009	U063	U117	U168	U225	U400
D022	K002	K061	K148	P036	P097	U010	U064	U118	U169	U226	U401
D023	K003	K062	K149	P037	P098	U011	U066	U119	U170	U227	U402
D024	K004	K069	K150	P038	P099	U012	U067	U120	U171	U228	U403
D025	K005	K071	K151	P039	P101	U014	U068	U121	U172	U234	U404
D026	K006	K073	K156	P040	P102	U015	U069	U122	U173	U235	U407
D027	K007	K083	K157	P041	P103	U016	U070	U123	U174	U236	U408
D028	K008	K084	K158	P042	P104	U017	U071	U124	U176	U237	U409
D029	K009	K085	K159	P043	P105	U018	U072	U125	U177	U238	U410
D030	K010	K086	K160	P044	P106	U019	U073	U126	U178	U239	U411
D031	K011	K087	K161	P045	P108	U020	U074	U127	U179	U240	
D032	K013	K088	K169	P046	P109	U021	U075	U128	U180	U243	
D033	K014	K093	K170	P047	P110	U022	U076	U129	U181	U244	
D034	K015	K094	K171	P048	P111	U023	U077	U130	U182	U246	
D035	K016	K095	K172	P049	P112	U024	U078	U131	U183	U247	
D036	K017	K096	K174	P050	P113	U025	U079	U132	U184	U248	
D037	K018	K097	K175	P051	P114	U026	U080	U133	U185	U249	
D038	K019	K098	K176	P054	P115	U027	U081	U134	U186	U271	
D039	K020	K099	K177	P056	P116	U028	U082	U135	U187	U277	
D040	K021	K100	K178	P057	P118	U029	U083	U136	U188	U278	
D041	K022	K101	K181	P058	P119	U030	U084	U137	U189	U279	
D042	K023	K102	P001	P059	P120	U031	U085	U138	U190	U280	
D043	K024	K103	P002	P060	P121	U032	U086	U139	U191	U328	
F001	K025	K104	P003	P062	P122	U033	U087	U140	U192	U353	
F002	K026	K105	P004	P063	P123	U034	U088	U141	U193	U359	
F003	K027	K106	P005	P064	P127	U035	U089	U142	U194	U364	
F004	K028	K107	P006	P065	P128	U036	U090	U143	U196	U365	
F005	K029	K108	P007	P066	P185	U037	U091	U144	U197	U366	
F006	K030	K109	P008	P067	P188	U038	U092	U145	U200	U367	
F007	K031	K110	P009	P068	P189	U039	U093	U146	U201	U372	
F008	K032	K111	P010	P069	P190	U041	U094	U147	U202	U373	

II. Conditions

General conditions of this exemption are found at 40 CFR part 148. The exemption granted to VEI on August 7, 1990, included a number of specific conditions. Conditions numbered (1), (2), (3), (4), and (9) remain in force. Construction of a monitoring well required under condition 5 has been completed, and the required monitoring will continue through the life of the facility. Conditions numbered (6), (7), and (8) have been fully satisfied. The results of the work carried out under these conditions confirms that the model used to simulate fluid movement within the injection zone for the next 10,000 years is valid and results of the simulation bound the region of the injection zone within which the waste will be contained.

Jo Lynn Traub,

Director, Water Division, Region 5.

[FR Doc. 05–17434 Filed 8–31–05; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

Summary: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Tuesday, September 20, 2005, from 9:30 a.m. to 12 p.m. The meeting will be held at the Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include discussion of renewable energy exports and related export financing trends.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented, and you may contact Teri Stumpf to be placed on the attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 16, 2005, Teri Stumpf. Room 1203, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

Further Information: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

Howard A. Schweitzer,

Acting General Counsel.

[FR Doc. 05–17370 Filed 8–31–05; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 2005.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Financial Bankshares, Inc., Abilene, Texas; to merge with Bridgeport Financial Corporation, Bridgeport, Texas, and indirectly acquire Bridgeport Bancshares, Inc., Dover, Delaware, and The First National Bank of Bridgeport, Bridgeport, Texas.

Board of Governors of the Federal Reserve System, August 26, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–17397 Filed 8–31–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 26, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. FNB Corp., Asheboro, North Carolina; to merge with United Financial, Inc., Graham, North Carolina, and thereby indirectly acquire Alamance Bank, Graham, North Carolina.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice

President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hometown Bancshares, Inc., Carthage, Missouri; to acquire 51 percent of the voting shares of OakStar Bancshares, Inc., and thereby indirectly acquire OakStar Bank, National Association, both of Springfield, Missouri (in organization).

2. OakStar Bancshares, Inc., Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of OakStar Bank, National Association (in organization), Springfield, Missouri.

Board of Governors of the Federal Reserve System, August 29, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–17442 Filed 8–31–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for the Continental United States (CONUS)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 06–1, Fiscal Year (FY) 2006 continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration's (GSA's) annual per diem review has resulted in lodging and meal allowances changes for locations within the continental United States (CONUS) to provide for the reimbursement of Federal employees' expenses covered by per diem. Per Diem Bulletin 06–1 increases/decreases the maximum per diem amounts in existing per diem localities. The standard CONUS lodging amount of $60 is unchanged. The CONUS per diems prescribed in Bulletin 06–1 may be found at *http://www.gsa.gov/perdiem*. GSA based the lodging per diem rates on the average daily rate that the lodging industry reports. The use of such data in the per diem rate setting process enhances the Government's ability to obtain policy compliant lodging where it is needed. In addition to the annual lodging study, GSA conducted a meals study which resulted in new meal allowances for FY 2006. Bulletin 06–1 also contains a listing of pertinent information that must be submitted through an agency for GSA to restudy a location if a CONUS per diem rate is insufficient to meet necessary expenses.

DATES: This notice is effective October 1, 2005, and applies for travel performed on or after October 1, 2005 through September 30, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Lois Mandell, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management, at (202) 501–2824, or by email at *www.gsa.gov/perdiemquestions*. Please cite Notice of Per Diem Bulletin 06–1.

SUPPLEMENTARY INFORMATION:

A. Background

After an analysis of current data, GSA has determined that current lodging rates for certain localities do not adequately reflect the lodging economics in those areas. In FY06, we have refined our methodology to include 50 percent more properties, and current ADR data capturing the business week (Monday through Thursday) rather than the entire week, as was done for the 2005 rates. A meals study has also been conducted which resulted in new meal allowances.

B. Change in standard procedure

GSA issues/publishes the CONUS per diem rates, formerly published in Appendix A to 41 CFR chapter 301, solely on the internet at *http://www.gsa.gov/perdiem*. This process, implemented in 2003, ensures more timely changes in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 25, 2005.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. 05–17481 Filed 8–31–05; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–4040–0003]

Grants.gov Program Management Office; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Grants.gov Program Management Office, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by the Department of Health and Human Services is publishing the following summary of proposed collection for public comment. Interested individuals are invited to send comments regarding any aspect of this collection of information or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular.

Title of Information Collection: SF–424 Short Organizational.

Form/OMB No.: OS–4040–0003.

Use: On March 24, 2005, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by HHS, published the proposed the SF–424 Short Organizational (Short) collection for public comment in the **Federal Register** (70 FR 15089).

Interested individuals were invited to send comments regarding any aspect of this collection of information. This notice indicates request for extension of OMB clearance for the SF–424 (Short), and also responds to comments received on the March 24, 2005, **Federal Register** notice.

The SF–424 (short) is a simplified, alternative government-wide data set and application cover page for use by Federal grant-making agencies. Agencies may use the SF–424 (Short) for grant programs not requiring all the data that is required on the SF–424 core data set and form. This information collection request also includes two additional government-wide forms, the Key Contacts form and the Project Abstract form, each of which can be used in conjunction with the SF–424 to collect supplemental applicant data. The Key Contacts form is an optional form that the agencies may use to collect additional key contact or point of contact information. The Project Abstract form is also an optional form that provides the mechanism for the applicant to attach a file that contains an abstract of the project, in a format specified by the agency.

The SF–424 (Short) and supplemental data set and forms are currently available for use as part of the electronic

application process of Grants.gov, which was deployed in October 2003 and is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107). The standard data set replaces numerous agency data sets and reduces the administrative burden placed on the grants community. Federal agencies are not required to collect all of the information included in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package.

Comments sent to OMB by the public, questioned the need to collect the Social Security Number (SSN) for the Project Director and/or the Primary Contact/Grants Administrator. Grants.gov responded to this comment by revising the application cover page to indicate that SSN is optional and adding the following statement, ''Disclosure of SSN is voluntary. Please see the application package instructions for the agency's authority and routine uses of the data''. In addition, OMB has also requested that Grants.gov, in consultation with other agencies, investigate options for a unique identifier other than SSN. Grants.gov plans to address this condition through its newly formed Agency User Group.

The estimate of the total burden of the collection information has been updated based on the Paperwork Reduction Act Worksheets (OMB 83–C) received from the agencies. Currently, six agencies plan to use the SF–424 (Short) in lieu of the SF–424 for eligible grant programs. Collectively, the agencies plan to receive 8,549 applications annually and estimate that it takes applicants 25 minutes on average to complete each application. Cumulatively, these organizations report the total burden to applicants to be 3,652 hours.

Frequency: Recordkeeping, Reporting, on occasion.

Affected: Federal, State, Local and Tribal governments; farms; non-profit institutions, and other for-profit.

Total Annual Respondents: 8,276.

Total Annual Responses: 8,549.

Average Burden Per Response: 25 minutes.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (4040–0003), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: August 18, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–17386 Filed 8–31–05; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–4040–0005]

Grants.gov Program Management Office; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Grants.gov Program Management Office, HHS.

Notice of Proposed Requirement To Establish Government-Wide Standard Data Elements for Use by All Federal Grant Making Agencies—SF–424 Individual

In compliance with the requirement of the Paperwork Reduction Act of 1995, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by the Department of Health and Human Services is publishing the following summary of proposed collection for public comment. Interested individuals are invited to send comments regarding any aspect of this collection of information including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular.

Title of Information Collection: SF–424 Individual.

Form/OMB No.: OS–4040–0005.

Use: On March 24, 2005, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by HHS, published the proposed the SF–424 Application for Federal Assistance, Individual (SF–424 I) collection for public comment in the **Federal Register** (70 FR 15090). Interested individuals were invited to send comments regarding any aspect of this collection of information. This notice indicates request for extension of OMB clearance for the SF–424 (I), and also responds to comments received on the March 24, 2005, **Federal Register** notice.

The SF–424 (I) is the government-wide data set and application cover page for use by Federal grant-making agencies that award grants to individuals. The SF–424 (I) is currently available for use as part of the electronic application process of Grants.gov, which was deployed in October 2003 and is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107). The standard data set replaces numerous agency data sets and reduces the administrative burden placed on the grants community. Federal agencies are not required to collect all of the information included in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package.

Comments sent to OMB by the public, questioned the need to collect the Social Security Number (SSN). Grants.gov responded to this comment by revising the application cover page to indicate that SSN is optional and adding the following statement, ''Disclosure of SSN is voluntary. Please see the application package instructions for the agency's authority and routine uses of the data''. In addition, OMB has also requested that Grants.gov, in consultation with other agencies, investigate options for a unique identifier other than SSN. Grants.gov plans to address this condition through its newly formed Agency User Group.

The estimate of the total burden of the collection information has been updated based on the Paperwork Reduction Act Worksheets (OMB 83–C) received from the agencies. Currently, five agencies plan to use the SF–424 (I) instead of the SF–424 for eligible grant programs. Collectively, the agencies plan to receive 6,949 applications annually and estimate that it takes applicants 25 minutes on average to complete each

application. Cumulatively, these organizations report the total burden to applicants to be 2,863 hours.

Frequency: Recordkeeping, Reporting, on occasion.

Affected: Individuals.

Total Annual Respondents: 5,827.

Total Annual Responses: 6,949.

Average Burden Per Response: 25 minutes.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (4040–0005), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: August 18, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–17387 Filed 8–31–05; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0271]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of Currently Approved Collection.

Title of Information Collection: Data Collection for the Identification of Comparison Groups for the National Evaluation of the National Community Centers of Excellence in Women's Health (CCOE) Program.

Form/OMB No.: OS–0990–0271.

Use: The Office on Women's Health (OWH) is seeking a new clearance to conduct a Women's Health Comparison Study Participate Survey and a Community Centers of Excellence (CCOEs) Comparison Study Leadership Survey. The surveys will assess how well organizations that have CCOEs as compared to organizations that do not have CCOEs—coordinate quality health care services and information for women. The results of this survey will help determine sucesses and opportunities for improvement in women's health.

Frequency: Recordkeeping, Reporting on occasion.

Affected Public: State, local, or tribal governments, Federal Government, not-for-profit institutions.

Annual Number of Respondents: 4,010.

Total Annual Responses: 4,010.

Average Burden Per Response: 30 minutes.

Total Annual Hours: 1,005.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0271), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: August 23, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–17417 Filed 8–31–05; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Adolescent Family Life Care Demonstration Project End of Year Template;

Form/OMB No.: OS–0990–New;

Use: The Adolescent Family Life Care Demonstration projects provide and evaluate services for pregnant and parenting adolescents. The End of Year Template will provide an outline and forms to report annually on program and evaluation services and outcomes.

Frequency: Annually;

Affected Public: State, local, or tribal governments, business or other for profit, not for profit institutions;

Annual Number of Respondents: 50;

Total Annual Responses: 50;

Average Burden Per Response: 30 minutes;

Total Annual Hours: 106;

To obtain copies of the supporting statement and any related forms for the

proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–New), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: August 23, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–17418 Filed 8–31–05; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Adolescent Family Life Prevention Demonstration Project End of Year Template;

Form/OMB No.: OS–0990-New;

Use: The Adolescent Family Life Prevention Demonstration Projects provide services to promote abstinence to adolescents. The End of Year Template will provide an outline and forms to report annually on program and evaluation services and outcomes.

Frequency: Annually;

Affected Public: State, local, or tribal governments, business or other for profit, not for profit institutions;

Annual Number of Respondents: 60;

Total Annual Responses: 60;

Average Burden Per Response: 30 minutes;

Total Annual Hours: 65;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–New), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: August 23, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–17419 Filed 8–31–05; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–4040–0003]

Grants.gov Program Management Office; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Grants.gov Program Management Office, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by the Department of Health and Human Services is publishing the following summary of proposed collection for public comment. Interested individuals are invited to send comments regarding any aspect of this collection of information or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular;

Title of Information Collection: SF–424 Short Organizational;

Form/OMB No.: OS–4040–0003;

Use: On March 24, 2005, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by HHS, published the proposed SF–424 Short Organizational (Short) collection for public comment in the **Federal Register** (70 FR 15089).

Interested individuals were invited to send comments regarding any aspect of this collection of information. This notice indicates request for extension of OMB clearance for the SF–424 (Short), and also responds to comments received on the March 24, 2005, **Federal Register** notice.

The SF–424 (short) is a simplified, alternative government-wide data set and application cover page for use by Federal grant-making agencies. Agencies may use the SF–424 (Short) for grant programs not requiring all the data that is required on the SF–424 core data set and form. This information collection request also includes two additional government-wide forms, the Key Contacts form and the Project Abstract form, each of which can be used in conjunction with the SF–424 to collect supplemental applicant data. The Key Contacts form is an optional form that the agencies may use to collect additional key contact or point of contact information. The Project Abstract form is also an optional form that provides the mechanism for the applicant to attach a file that contains an abstract of the project, in a format specified by the agency.

The SF–424 (Short) and supplemental data set and forms are currently available for use as part of the electronic

application process of Grants.gov, which was deployed in October 2003 and is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107). The standard data set replaces numerous agency data sets and reduces the administrative burden placed on the grants community. Federal agencies are not required to collect all of the information included in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package.

Comments sent to OMB by the public, questioned the need to collect the Social Security Number (SSN) for the Project Director and/or the Primary Contact/Grants Administrator. Grants.gov responded to this comment by revising the application cover page to indicate that SSN is optional and adding the following statement, ''Disclosure of SSN is voluntary. Please see the application package instructions for the agency's authority and routine uses of the data.'' In addition, OMB has also requested that Grants.gov, in consultation with other agencies, investigate options for a unique identifier other than SSN. Grants.gov plans to address this condition through its newly formed Agency User Group.

The estimate of the total burden of the collection information has been updated based on the Paperwork Reduction Act Worksheets (OMB 83–C) received from the agencies. Currently, six agencies plan to use the SF–424 (Short) in lieu of the SF–424 for eligible grant programs. Collectively, the agencies plan to receive 8,549 applications annually and estimate that it takes applicants 25 minutes on average to complete each application. Cumulatively, these organizations report the total burden to applicants to be 3,652 hours.

Frequency: Recordkeeping, Reporting, on occasion.

Affected: Federal, State, Local and Tribal governments; farms; non-profit institutions, and other for-profit.

Total Annual Respondents: 8,276.

Total Annual Responses: 8,549.

Average Burden Per Response: 25 minutes.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (4040–0003), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: August 18, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–17429 Filed 8–31–05; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–4040–0005]

Grants.gov Program Management Office; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Grants.gov Program Management Office, HHS.

ACTION: Notice of proposed requirement to establish Government-wide standard data elements for use by all Federal grant making agencies—SF–424 Individual.

In compliance with the requirement of the Paperwork Reduction Act of 1995, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by the Department of Health and Human Services is publishing the following summary of proposed collection for public comment. Interested individuals are invited to send comments regarding any aspect of this collection of information. including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular;

Title of Information Collection: SF–424 Individual;

Form/OMB No.: OS–4040–0005;

Use: On March 24, 2005, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by HHS, published the proposed SF–424 Application for Federal Assistance, Individual (SF–424 I) collection for public comment in the **Federal Register** (70 FR 15090).

Interested individuals were invited to send comments regarding any aspect of this collection of information. This notice indicates request for extension of OMB clearance for the SF–424 (I), and also responds to comments received on the March 24, 2005, **Federal Register** notice.

The SF–424 (I) is the government-wide data set and application cover page for use by Federal grant-making agencies that award grants to individuals. The SF–424 (I) is currently available for use as part of the electronic application process of Grants.gov, which was deployed in October 2003 and is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107). The standard data set replaces numerous agency data sets and reduces the administrative burden placed on the grants community. Federal agencies are not required to collect all of the information included in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package.

Comments sent to OMB by the public, questioned the need to collect the Social Security Number (SSN). Grants.gov responded to this comment by revising the application cover page to indicate that SSN is optional and adding the following statement, ''Disclosure of SSN is voluntary. Please see the application package instructions for the agency's authority and routine uses of the data''. In addition, OMB has also requested that Grants.gov, in consultation with other agencies, investigate options for a unique identifier other than SSN. Grants.gov plans to address this condition through its newly formed Agency User Group.

The estimate of the total burden of the collection information has been updated based on the Paperwork Reduction Act Worksheets (OMB 83–C) received from the agencies. Currently, five agencies plan to use the SF–424 (I) instead of the SF–424 for eligible grant programs. Collectively, the agencies plan to receive 6,949 applications annually and estimate that it takes applicants 25 minutes on average to complete each

application. Cumulatively, these organizations report the total burden to applicants to be 2,863 hours.

Frequency: Recordkeeping, Reporting, on occasion.

Affected: Individuals.

Total Annual Respondents: 5,827.

Total Annual Responses: 6,949.

Average Burden Per Response: 25 minutes.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (4040–0005), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: August 18, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–17430 Filed 8–31–05; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the National Center for Injury Prevention and Control Initial Review Group, Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through August 20, 2007.

For further information, contact Gwen Cattledge, Executive Secretary, National Center for Injury Prevention and Control Initial Review Group, Centers for Disease Control and Prevention of the Department of Health and Human Services, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341–3717, telephone 770–488–4655.

The Director, Management and Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2005.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–17399 Filed 8–31–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Epidemiologic Study of Inflammatory Bowel Disease, Request for Applications Number DP–05–130; Correction

Correction: This notice was published in the **Federal Register** on August 18, 2005, Volume 70, Number 159, page 48574. The meeting time and date has been changed.

Time and Date: 2:30 p.m.–4 p.m., September 27, 2005 (Closed).

FOR FURTHER INFORMATION CONTACT: J. Felix Rogers, PhD, MPH, Scientific Review Administrator, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, MS–K92, Atlanta, GA 30341, Telephone 404.639.6101.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2005.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–17410 Filed 8–31–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1308–NC]

RIN 0938–AN94

Medicare Program; Withdrawal of Ambulance Fee Schedule Issued in Accordance With Federal District Court Order in *Lifestar Ambulance, Inc.* v. *United States,* No. 4:02-CV–127–1 (M.D. Ga., Jan. 16, 2003)—Medicare Covered Ambulance Services

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period withdraws the fee schedule that was put in place in 2003 to effect compliance with the Order in *Lifestar Ambulance, Inc.* v. *United States*. [211 F.R.D. 688 (M.D. Ga. 2003)] That Order was vacated on January 10, 2005 by the U.S. Court of Appeals for the Eleventh Circuit and is no longer in force.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 31, 2005.

ADDRESSES: In commenting, please refer to file code CMS–1308–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* or to *http://www.regulations.gov* (attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1308–NC, P.O. Box 8011, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1308–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7197 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or

7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

EFFECTIVE DATE: This notice is effective on September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Anne Tayloe, (410) 786–4546.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1308–NC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

Section 4531 of the Balanced Budget Act of 1997 (BBA) required the Secretary of the Department of Health and Human Services (HHS) (the Secretary) to establish a national fee schedule (FS) for payment of ambulance services through a negotiated rulemaking process. The statute provides that the Secretary phase in the application of payment rates under the FS in a fair and efficient manner and that the aggregate amount of payment for the services under the new FS not exceed the amount that would be paid under the old system as stated in section 1834(l) of the Social Security Act (the Act). The BBA provided that the FS would apply to services furnished on or after January 1, 2000.

The proposed and final FS rules both provided for payment for ambulance services to be made in two parts: (1) A base rate; and (2) a payment for mileage. Section 423 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), which was passed after the publication of the proposed FS rule and prior to the publication of the final rule, provided that during the phase-in of the FS there would be full payment of any national mileage rate for ambulance services furnished by suppliers in States where the Medicare carrier did not previously pay separately for all mileage within the county from which the beneficiary is transported (''BIPA mileage provision''). Two States were identified as qualifying under this provision: North Carolina (NC) and Tennessee (TN). BIPA specifies that this provision applies to services furnished on or after July 1, 2001.

This FS was implemented on April 1, 2002 by a final rule published in the **Federal Register** on February 27, 2002 (67 FR 9100). As stated in the final rule, the phase-in is accomplished over five years by blending a percentage of the payment that is based on the old payment system with a percentage of the payment based on the FS according to the following schedule:

Year	Old (percent)	FS (percent)
4/1/2002–12/31/2002	80	20
2003	60	40
2004	40	60
2005	20	80
2006	0	100

The full national FS mileage rate in those States that qualify for BIPA provision section 423 (NC, TN) was paid as of April 1, 2002.

In *Lifestar Ambulance Service, Inc.* v. *United States,* 211 F.R.D. 688 (M.D. Ga. 2003), three ambulance suppliers seeking to represent a nationwide class of ambulance suppliers sued the Secretary, arguing that he had no discretion to give the FS an effective date other than January 1, 2000. The district court agreed with the plaintiff suppliers and issued an order certifying a nationwide class of ambulance suppliers and requiring the Secretary to adopt a FS for the January 1, 2000, through March 31, 2002 period. The court's decision also required the Secretary to pay full mileage under the BIPA provision for the July 1, 2001 through March 31, 2002 period.

On April 16, 2003, the Secretary issued a notice in compliance with the district court's order. (68 FR 18654) The Secretary established a FS based on the FS as described in the **Federal Register** (67 FR 9100), with a modified phase-in as follows:

Year	Old (percent)	FS (percent)
2000	95	5
2001	90	10
1/1/2002–3/31/2002	80	20

Additionally, under the district court's order, the notice stated that the Medicare program would pay full BIPA mileage for services provided on or after July 1, 2001. The notice stated that the Secretary had appealed the decision in *Lifestar* and that any FS or BIPA mileage payment made under the notice for the January 1, 2000 through March 31, 2002 period would be subject to recoupment if the district court's decision was reversed on appeal. The Secretary has not made any payments under this FS. In addition, we are not aware of any ambulance suppliers seeking payment under this FS prior to the Eleventh Circuit's reversal of the district court decision, although some were seeking full mileage under the BIPA mileage provision.

On appeal, the Eleventh Circuit found that the district court had lacked jurisdiction over the case because the plaintiffs had not gone through the administrative process before filing suit. *See Lifestar Ambulance Service, Inc.* v.

United States, 365 F.3d 1293 (11th Cir. 2004), *cert. denied,* -US-, 125 S.Ct. 866 (Jan 10, 2005). It reversed and vacated the district court decision and remanded the case with instructions to dismiss for lack of subject-matter jurisdiction. Plaintiffs unsuccessfully sought rehearing *en banc* and Supreme Court review. The district court dismissed the complaint in accordance with the Eleventh Circuit's mandate on February 2, 2005.

II. Provisions of the Notice With Comment Period

[If you choose to comment on issues in this section, please include the caption ''PROVISIONS'' at the beginning of your comments.]

The purpose of this notice is to withdraw the FS covering the period of January 1, 2000 through March 31, 2002 that was published in the April 16, 2003 notice. As we stated explicitly in the April 16, 2003 notice, we only issued this ambulance fee schedule to comply with the *Lifestar* district court order and that order was vacated and the *Lifestar* case dismissed. Although the April 16, 2003 notice clearly states that payment under the FS for the January 1, 2000 through March 31, 2002 period is dependent on the district court opinion not being reversed by the Eleventh Circuit Court of Appeals, refraining from formally withdrawing the FS for this period could create unnecessary confusion.

In light of our inability to issue a fee schedule by January 1, 2000, we continue to believe that giving the fee schedule prospective application clearly meets the intent of the Congress. The Congress made no indication that it wanted us to apply the base rate or the mileage provisions of the FS retroactively in the event that we were unable to issue the final FS by January 1, 2000. Also, given ample opportunity, the Congress did not provide specific direction regarding this issue after the January 1, 2000 date passed. The Congress itself took no further action on the issue (such as directing the implementation of its own version of an ambulance fee schedule).

Furthermore, the BBA directed the Secretary to phase in the application of the payment rates under the fee schedule in an efficient and fair manner and required that payments under the schedule in the year 2000 not exceed the inflation-adjusted expenditures that were made under the prior statute as stated in section 1834(l) of the Act. The FS was to reallocate expenditures among ambulance providers and suppliers in a manner that did not result in an increase in aggregate payments for ambulance services (for example, some providers and suppliers would have received higher payments, others would have received lower payments, and the changes would have offset each other.) Only additional payments made under the BIPA mileage provision were not required to meet this criteria. Applying the FS to the January 1, 2000 through March 31, 2002 period would violate this principle unless the FS applied to all ambulance providers and suppliers, not just those seeking additional payment under it. Accordingly, we may have to recoup monies paid to those providers and suppliers whose payments were greater under the pre-existing ''reasonable charge'' and ''reasonable cost'' system when compared to what they would have received under the FS for the January 1, 2000 through March 31, 2002 period. Applying the FS retroactively to the providers and suppliers would arguably not constitute a fair phase-in of the FS provisions.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

The FS being withdrawn by this notice was only put in place pursuant to the court's order in *Lifestar,* and explicitly provided that it would not be effective in the event the *Lifestar* decision was overturned on appeal. The *Lifestar* decision has been vacated, and the case in district court dismissed. To our knowledge no payments have been made under the FS to date and, had they been, such payments would be subject to recoupment pursuant to the provisions of the April 16, 2003, notice. Accordingly, there is no reason to keep a FS in place that CMS is no longer required to promulgate, and under which it would make no payments in light of the appellate court decision. To leave the FS in place while awaiting comments would only generate confusion on the part of ambulance providers and suppliers.

Therefore, we find good cause to waive the notice of proposed rulemaking with respect to the issuance of this notice.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Regulatory Impact Statement or Analysis

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Because the FS for the January 1, 2000 through March 31, 2002 is not one under which we are required to make payments in light of the Eleventh Circuit reversal of the district court decision, withdrawing the FS will have no financial impact on providers and suppliers, or on government spending.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). Because the FS being withdrawn is not one under which we are required to make payments, in light of the Eleventh Circuit decision, withdrawing it will have no financial impact on program spending. Therefore, this notice is not a major notice as defined in Title 5, United States Code, section 804(2) and is not an economically significant notice under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not considered to be small entities. We have determined that this notice will not

have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments. There are no other alternatives at this time.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 17, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 25, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–17278 Filed 8–26–05; 9:46 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family and Youth Services Bureau; Positive Youth Development State and Local Collaboration Demonstration Projects

AGENCY: Family and Youth Services Bureau, Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Award announcement.

CFDA#: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.623. The title is the Positive Youth Development State and Local Collaboration Demonstration Projects.

Legislative Authority: Grants for Runaway and Homeless Youth programs are authorized by the Runaway and Homeless Youth Act (title III of the Juvenile Justice and Delinquency Prevention Act of 1974), as amended by the Missing, Exploited, and Runaway Children Protection Act of 1999, (Pub. L. 106–71).

Amount of Award: $100,000 per grantee.

Project Period: 9/30/04–9/29/05.

SUMMARY: Notice is hereby given that a noncompetitive grant supplement is being made to the following state agencies: State of Nebraska Health & Human Services, University of Kentucky Research Foundation, State of Oregon, New York Office of Children & Family Services, State of Louisiana, Iowa Dept. of Human Rights Criminal & Juvenile Justice, Commonwealth of Massachusetts, Illinois Department of Human Services, Governor's Office for Children Youth & Families. The purpose of this supplement is to support collaborations between state-level agencies and local community jurisdictions regarding positive development opportunities available to young people as approved in their original planning grant.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Family and Youth Services Bureau, 330 C Street, SW., Washington, DC 20447, Courtney Workman—(202) 205–8657, *cworkman@acf.hhs.gov*.

Dated: August 22, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 05–17371 Filed 8–31–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0343]

Agency Emergency Processing Under Office of Management and Budget Review; Guidance for Requesting an Extension to Use Existing Label Stock After the Trans Fat Labeling Effective Date of January 1, 2006

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). FDA is preparing a guidance document to notify the public of procedures being implemented by the agency to assist firms that wish to request, on a case-by-case basis upon an appropriate showing, an extension to use existing label stock after the effective date of the *trans* fat labeling final rule. This notice solicits comments on the proposed collection of information associated with the guidance document entitled ''Guidance for Requesting an Extension to Use Existing Label Stock After the *Trans* Fat Labeling Effective Date of January 1, 2006.''

DATES: Fax written comments on the collection of information by October 3, 2005. FDA is requesting approval of this emergency processing by September 8, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. FDA issued a final rule (the *trans* fat final rule) on July 11, 2003 (68 FR 41434) to

require food labels to bear the gram amount of trans fat without a percent Daily Value (% DV) directly under the saturated fat line on the Nutrition Facts panel (*http://www.cfsan.fda.gov/~acrobat/fr03711a.pdf*). The *trans* fat final rule amended paragraph (c)(2) of § 101.9 *Nutrition Labeling of Food* (21 CFR 101.9). The effective date for the *trans* fat final rule is January 1, 2006. However, FDA has been advised by some businesses that they may experience hardship in revising their labels in time to meet the compliance date for *trans* fat labeling. Therefore, the agency believes that it would be appropriate to consider, on a case-by-case basis upon an appropriate showing, whether to exercise enforcement discretion with respect to the January 1, 2006, effective date for *trans* fat labeling for some businesses, so that these businesses would have the option of using some or all of their existing label stock that does not comply with the *trans* fat final rule.

FDA intends to notify the public, in a level 1 guidance document issued under the good guidance practices regulation (21 CFR 10.115), of the factors it intends to consider in granting or denying such requests and the process businesses may use to request the agency's consideration for enforcement discretion on *trans* fat labeling requirements. At a later date, FDA will announce the availability of a guidance entitled ''Guidance for Requesting an Extension to Use Existing Label Stock After the *Trans* Fat Labeling Effective Date of January 1, 2006.'' The guidance will provide voluntary recommendations on the process for firms that wish to request an extension to use existing label stock after the effective date of the *trans* fat final rule.

Because this guidance involves a collection of information, the PRA is implicated. However, the delay associated with normal PRA clearance procedures can reasonably be anticipated to prevent or disrupt the collection of information during a time period within which businesses would be most likely to make the request for the use of existing label stock before the effective date of January 1, 2006. As a result, given the need for immediate action, FDA requests emergency processing of this collection of information request.

With respect to the following proposed collection of information, FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Guidance for Requesting an Extension to Use Existing Label Stock After the *Trans* Fat Labeling Effective Date of January 1, 2006.

Description: This policy provides guidance to FDA and the food industry about when and how businesses may request that the agency consider enforcement discretion for the use of some or all existing label stock, that does not declare *trans* fat labeling in compliance with the *trans* fat final rule, on products introduced into interstate commerce on or after the January 1, 2006, effective date.

Industry Compliance With the *Trans* Fat Final Rule

The *trans* fat final rule affects almost all manufacturers of packaged, labeled food sold in the United States. FDA believes that most businesses, including small businesses, should not have difficulty meeting the January 1, 2006, effective date of the *trans* fat final rule. However, under certain circumstances some businesses may want to request that the agency consider an extension of time to use current labels that are not in compliance with the *trans* fat final rule. Therefore, the agency believes that it would be appropriate to consider, on a case-by-case basis, whether to exercise enforcement discretion on the January 1, 2006, effective date for *trans* fat labeling for some businesses that can make an appropriate showing.

The agency intends to consider the following factors in any request from a firm for the agency's exercise of enforcement discretion:

- Whether products contain 0.5 gram or less *trans* fat;
- The explanation of why the request is being made;
- The number of existing labels that the firm is requesting to use;
- The dollar amount associated with the number of existing labels to be used; and
- The estimate of the amount of time needed, not exceeding 12 months, to exhaust the number of existing labels the firm is requesting to use.

Requests may be considered at any time before or after the January 1, 2006, effective date of the *trans* fat final rule. Firms may submit their requests in writing to FDA's Center for Food Safety and Applied Nutrition. Firms are encouraged to keep this letter of request for their records and should make a copy available for inspection to any officer or employee of the FDA who requests it. FDA intends to use the information in the letter to make decisions about whether a firm's product is subject to FDA's enforcement discretion for the *trans* fat labeling requirements.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Written requests to FDA in year one	56	1	56	5	280
Written requests to FDA in year two	28	1	28	5	140
Onetime burden hours for years one and two					420

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates a 2-year time period during which these requests will be made following the issuance of this guidance. Beyond 2 years, FDA expects businesses to fully comply with the *trans* fat final rule, as it is unlikely that there will still be old labeling stock left to use.

FDA expects that, although all sizes of business are eligible, small businesses and very small businesses are the firms most likely to be able to demonstrate a need to request an extension to the *trans* fat labeling deadline. The agency has already received three requests from businesses regarding the *trans* fat labeling compliance date of January 1, 2006. Because small businesses are more likely to submit requests for extensions, and most of the affected businesses are small, we use the number of small businesses as the base to calculate the reporting burden. The regulatory flexibility analysis of the *trans* fat final rule estimated that 11,180 small businesses will have to revise the label on their products as a result of the *trans* fat final rule. Given that only three businesses have submitted requests to FDA so far, FDA estimates that, in the first year following the issuance of the guidance, the total number of businesses that will request a labeling compliance extension from FDA can be estimated as approximately 0.5 percent of the number of small businesses, which equals 56.

FDA estimates that it will take one employee approximately 4 hours to put together a request to FDA and approximately 1 hour for a supervisor to look over the request before submitting it to the agency. Thus, each firm submitting a compliance extension request will need 5 hours of employee time to complete the request. Given that 56 businesses are expected to submit written requests in year one, the total burden hours for year one are 280.

In year two, FDA expects about one-half as many firms to request a labeling compliance extension. So for year two, 28 firms are expected to file a request for an extension to the labeling compliance date. Again, assuming that it will take 5 hours to complete each request, the total burden hours for year two will be 140.

Dated: August 26, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–17413 Filed 8–29–05; 2:49 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 27, 2005, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Scott Colburn, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287, ext. 177, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512520. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear a presentation on FDA's Critical Path Initiative. Subsequently, the committee will discuss and make recommendations regarding general issues related to the model used for validation testing to support a claim of decontamination of potentially transmissible spongiform encephalopathy (TSE)-contaminated surgical instruments. Background information for the topics, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting, on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 13, 2005. Oral presentations from the public will be scheduled for approximately 60 minutes at the beginning of deliberations and for approximately 30 minutes near the end of deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 13, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Willliams at 240–276–0450, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 23, 2005.

Scott Gottlieb,

Deputy Commissioner for Policy.

[FR Doc. 05–17412 Filed 8–31–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; amendment.

SUMMARY: The Health Resources and Services Administration is amending a notice that appeared in the **Federal Register** of August 22, 2005 (70 FR 48962–48963) announcing an Advisory Commission on Childhood Vaccines meeting on September 14, 2005. The document announced that the public can join the meeting by attending in person or by audio conference call. The meeting will now be held by audio conference call only. This document amends the notice by changing the place of the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Lee at 301–443–2124 or e-mail *clee@hrsa.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 05–16502, beginning on page 48962 in the **Federal Register** of Monday, August 22, 2005, make the following amendment on page 48963 in the third paragraph: Change place of meeting to Audio Conference Call.

Dated: August 25, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–17379 Filed 8–31–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Request for Nominations

Summary: The National Institutes of Health (NIH) is issuing this notice to invite private sector providers and users of chemical information to indicate their interest in participating in a new working group of the Board of Scientific Counselors of the National Center for Biotechnology Information (NCBI), National Library of Medicine (NLM), to advise on interactions with private sector information providers in the development of PubChem. PubChem is a publicly available NIH database that includes information about the biological activities of chemical compounds. It is designed to facilitate more integrated access to these information resources for biomedical researchers. The working group will advise on such issues as improving connections with private sector chemical information providers in order to enhance linkages and interoperability among resources and avoid unnecessary duplication with commercial information services.

Response Date: Persons, groups, or organizations interested in participating in the working group should send an e-mail indicating their expertise in issues related to PubChem, along with their contact information, to: Christine Ireland, Committee Management Officer, NLM, *irelanc@mail.nih.gov.* Emails must be received on or before October 3, 2005.

Supplementary Information: In 2004, as part of the NIH's Roadmap Initiative to speed new medical treatments and improved health care to all Americans, NIH launched an on-line database called PubChem as part of an integrated suite of databases supporting the New Pathways to Discovery component of the Roadmap effort. New Pathways focuses on very basic biomedical research, and especially focuses on understanding the molecular biology of health and illnesses. Bioinformatics is a critical component of that effort and PubChem provides the free, publicly available database that links chemical information with biomedical research and clinical information.

Drawing from many public sources, PubChem organizes information about the biological activities of chemical compounds into a comprehensive biomedical database. All of this supports the part of the Roadmap called the Molecular Libraries initiative. This includes nine different components—a compound repository, the NIH Chemical Genomics Center, the Molecular Libraries Screening Center Network, PubChem, a series of Cheminformatics Research Centers, and technology development for chemical diversity synthesis, assay development, instrumentation, and toxicology. PubChem is the informatics backbone for virtually all of these components, and is intended to empower the scientific community to use small molecule chemical compounds in their research. Small molecules include many of the chemicals commonly used as medicines. They affect genes, proteins, cells, and people. Identification of small molecule tools is a compelling next step following on the success of the Human Genome Project. It offers a new paradigm to transform basic biomedical research, speeding development of new therapies and finding solutions to America's most important health problems. NIH's goals are to rapidly translate the discoveries of the genome into new therapeutics and to integrate small molecule chemistry into biomedical research. PubChem facilitates these efforts by linking genome, chemistry, protein, and biomedical literature information. This seamless integration of resources is essential for providing information about potential starting points for the development of new medications. Without PubChem, the work of NIH funded scientists will be greatly hampered and progress in biomedical research will be slowed.

NIH intends to continue to operate PubChem as a free, publicly available resource that is an integral part of the NIH Roadmap Initiative. This is consistent with the principles of publicly funded science. NLM has had extensive and valuable private sector interactions for developing and maintaining other major information resources, such as sequence databases and PubMed/Medline. NIH believes that the private sector has expertise that will be helpful in the further development of PubChem and will help to ensure coordinated and integrated access by researchers to the full range of resources useful for advancing scientific discovery. Therefore, NIH is asking private sector providers and users of chemical information to indicate their interest in participating in a working group of the NLM/NCBI Board of Scientific Counselors, which is established under the Federal Advisory Committee Act. All members of such a working group would be required to disclose their potential conflicts. This new working group of outside experts would be separate from the existing PubChem Working Group, which provides advice about details of the operation of the PubChem database and also reports to the NCBI Board of Scientific Counselors. Specifically, this working group would advise the NCBI Board of Scientific Counselors on such issues as:

- Establishing a process for retrospective evaluation of the biomedical relevance of compounds entered into PubChem
- Ensuring the provenance of the data (*i.e.*, whether private data are being improperly deposited in PubChem)
- Ensuring the high quality of data in PubChem
- Monitoring the effect of PubChem on scientific progress
- Improving/integrating interactions with commercial information providers
- Avoiding unnecessary duplication with commercial information providers

Dated: August 29, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 05–17488 Filed 8–31–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA No.: 93.566, Refugee Assistance—State Administered Programs]

Office of Refugee Resettlement; Final Notice of Allocations to States of FY 2005 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of allocations to States of FY 2005 funds for refugee social services.

SUMMARY: This notice establishes the final allocations to States of FY 2005 funds for refugee [1] social services under

[1] Eligibility for refugee social services include refugees, asylees, Cuban and Haitian entrants, certain Amerasians from Viet Nam who are admitted to the U.S. as immigrants, certain Amerasians from Viet Nam who are U.S. citizens, and victims of a severe form of trafficking who receive certification or eligibility letters from ORR, and certain other specified family members. *See* 45 CFR 400.43 and ORR State Letter #01–13 on the Trafficking Victims Protection Act, dated May 3, 2001, as modified by ORR State Letter # 02–01, January 4, 2002, and ORR State Letter # 04–12, June 18, 2004.

The term ''refugee,'' used in this notice for convenience, is intended to encompass such

Continued

the Refugee Resettlement Program (RRP). The final notice reflects amounts adjusted based upon final adjustments to FY 2002, FY 2003 and FY 2004 (0october 1, 2001 through September 30, 2004) data submitted to ORR by States.

Application: A State must have an approved State Annual Services Plan, developed on the basis of local consultative process, as required by 45 CFR 400.11(b)(2) in order to use formula social services funds described in this final notice. A State must indicate in its refugee program State Annual Services Plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees. In order to use formula social services funds for Cuban and Haitian entrants, a State must have an approved State Plan under the Cuban/Haitian Entrant Program (CHEP).

FOR FURTHER INFORMATION CONTACT: Kathy Do, Division of Budget, Policy, and Data Analysis (BPDA), telephone: (202) 401–4579, e-mail: *kdo@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Amounts for Allocation

The Office of Refugee Resettlement (ORR) has (after rescission, adjustments, and reprogramming) $152,242,365 in Fiscal Year 2005 refugee social service funds as part of the FY 2005 appropriation under the Consolidated Appropriations Act, 2005, (Pub. L. 108–447). This amount reflects a rescission of 0.008 applied across the board to all line items, and a reprogramming of $12,654,891 from social services to Transitional and Medical Services (TAMS).

The FY 2005 Conference Report (H. Rpt. No. 108–792) reads as follows with respect to Refugee and Entrant Assistance:

''The conference agreement includes $488,336,000 for the refugee and entrant assistance programs rather than $491,336,000 as proposed by the House and $477,239,000 as proposed by the Senate* * *

The conference agreement provides $166,218,000 for social services, the same level as proposed in the House bill. The Senate had proposed $155,121,000 for this program. Within the funds provided, the conference agreement includes $19,000,000 as outlined in the House report. The conferees intend that funds provided above the request for social services shall be used for refugee school impact grants and for additional assistance in resettling and meeting the needs of the Hmong and Somali Bantu refugees expected to arrive during 2004 and 2005. The conferees also urge the Office of Refugee Resettlement to continue supporting discretionary grant activities, such as the individual development accounts, community service employment, and elderly refugee programs to the extent they have been successful in integrating refugees into society and promoting their self sufficiency.''

The House Committee Report, H. Rpt. No.108–636 states under Social Services:

''The Committee provides $166,218,000 for social services. This is $15,097,000 more than the budget request and $14,000,000 more than the fiscal year 2004 level. Funds are distributed by formula as well as through the discretionary grant making process for special projects. The Committee intends that funds provided above the request shall be used for Refugee School Impact Grants and for additional assistance in resettling and meeting the needs of the Hmong refugees expected to arrive during 2004 and 2005.

Within the funds provided, the Committee has included $19,000,000 for increased support to communities with large concentrations of Cuban and Haitian refugees of varying ages whose cultural differences make assimilation especially difficult, justifying a more intense level and longer duration of Federal assistance for healthcare and education.''

ORR intends to use the $152,242,365 appropriated (after reprogramming) for FY 2005 social services as follows:

- $77M is to be allocated under the 3-year population (FYs 2002, 2003, and 2004) formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- $2M is to be allocated under the 3-year population formula, as a set-aside for citizenship and naturalization preparation services for the elderly.
- $17M is to be awarded as new social service discretionary grants under new and prior year standing competitive grant announcements issued separately from this proposed notice.
- $19M is to be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds will be awarded under a prior year separate announcement.
- $24M is to be awarded through discretionary grants for continuation of awards made in prior years.
- $12M in FY 2005 social services funding will be awarded under a separate announcement for educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentrations of refugees.
- A reprogramming of $12,645,891 from social services to Transitional and Medical Services (TAMS) in July 2005 was transacted to cover FY 2005 cash and medical assistance costs.

Refugee Social Service Funds

The FY 2005 population figures used for the final formula social services allocation include refugees, Amerasians from Viet Nam, Cuban/Haitian entrants, Havana parolees, asylees, and victims of severe forms of trafficking for FYs 2002, 2003, and 2004. These population figures were adjusted in the final allocation to reflect more accurate information on arrivals, secondary migration (including that of victims of severe forms of trafficking), asylees, and entrant data submitted by States. (See Section III. Basis of Population Estimates).

The Director allocates $77,136,460 to States on the basis of each State's proportion of the national population of refugees who have been in the U.S. three years or less as of October 1, 2004 (including a floor amount for States that have small refugee populations). Of the amount, approximately $6.4M is to be awarded to Wilson/Fish Alternative Projects providing social services. As previously stated, $2M is to be allocated as a set-aside for citizenship and naturalization preparation services for the elderly.

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that ''funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.''

As established in the FY 1992 social services notice published in the **Federal Register** on August 29, 1991, section I, ''Allocation Amounts'' (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) a floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than

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additional persons who are eligible to participate in refugee program services.

$75,000, a base amount of $75,000 is provided for the State.

Population To Be Served and Allowable Services

Eligibility for refugee social services includes persons who meet all requirements of 45 CFR 400.43 (see Footnote 1 on page 1 for service populations). In addition, persons granted asylum are eligible for refugee benefits and services from the date that asylum was granted (See ORR State Letter No. 00–12, effective June 15, 2000, as clarified by ORR State Letter No. 00–15, August 3, 2000). Victims of a severe form of trafficking who have received a certification or eligibility letter from ORR and certain other specified family members are eligible from the date on the certification letter (see ORR State Letter No. 01–13, May 3, 2001, as modified by ORR State Letter No. 02–01, January 4, 2002, and ORR State Letter, No.04–12, June 18, 2004).

Services to refugees must be provided in accordance with the rules of 45 CFR Part 400 Subpart I—Refugee Social Services. Although the allocation formula is based on the 3-year refugee population (FYs 2002, 2003, and 2004), States may provide services to refugees who have been in the country up to 60 months (5 years), with the exception of referral and interpreter services and citizenship and naturalization preparation services for which there is no time limitation (45 CFR 400.152(b)).

Under waiver authority at 45 CFR 400.300, the Director of ORR may issue a waiver of the limitation on eligibility for social services contained in 45 CFR 400.152(b). There is no blanket waiver of this provision in effect for FY 2004. States may apply for a waiver of 45 CFR 400.152(b) in writing to the Director of ORR. Each waiver request will be reviewed based on supporting data and information provided. The Director of ORR will approve or disapprove each waiver request as expeditiously as possible in accordance with 45 CFR 400.300.

A State must have an approved State Annual Services Plan, developed on the basis of local consultative process, as required by 45 CFR 400.11(b)(2) in order to use formula social services funds described in this final notice. A State must indicate in its refugee program State Annual Services Plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees. In order to use formula social services funds for Cuban and Haitian entrants, a State must have an approved State Plan under the Cuban/Haitian Entrant Program (CHEP).

Allowable social services are those indicated in 45 CFR 400.154 and 400.155. Additional services not included in these sections that the State may wish to provide must be submitted to and approved by the Director of ORR as required under 45 CFR 400.155(h).

Service Priorities

In accordance with 45 CFR 400.147, States are required to provide social services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) All newly arriving refugees during their first year in the U.S. who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence. In order for refugees to leave Temporary Assistance for Needy Families (TANF) quickly, States should, to the extent possible, ensure that all newly arriving refugees receive refugee-specific services designed to address the employment barriers that refugees typically face.

ORR encourages States to re-examine the range of services they currently offer to refugees. Those States that have had success in helping refugees achieve early employment may find it to be a good time to expand beyond the provision of basic employment services and address the broader needs that refugees have in order to enhance their ability to maintain financial security and to successfully integrate into the community. Other States may need to reassess the delivery of employment services in light of local economic conditions and develop new strategies to better serve the newly arriving refugee groups.

States should also be aware that ORR will make formula social services funds available to pay for social services that are provided to refugees who participate in Wilson/Fish projects (see footnote 4, Table 1) which can be administered by public or private non-profit agencies, including refugee, faith-based and community organizations. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate standing notice with respect to applications for such projects. The notice can be found in the **Federal Register** [Volume 69, FR 65, pages 17692–17700, (April 5, 2004)].

States are encouraged to consider eligible sub-recipients for formula social service funds, including public or private non-profit agencies such as, refugee, faith-based, and community organizations.

II. Comments and Response

ORR did not receive any comments in response to the Proposed Notice to States of FY 2005 Funds for Refugee Social Services.

III. Allocation Formulas

Of the funds available for FY 2005 for social services, $77,136,460 is to be allocated to States in accordance with the formula specified in A. below.

A. A State's allowable formula allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by

2. The total number of refugees, Cuban/Haitian entrants, parolees, and Amerasians from Viet Nam, as shown by the ORR Refugee Arrivals Data System (RADS) for FYs 2002, 2003, and 2004, and victims of severe forms of trafficking as shown by the certification and eligibility letters issued by ORR, who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated. This total also includes the total number of asylees who have been served by a State through its refugee resettlement or social services system in FYs 2002, 2003, and 2004. The resulting per capita amount is multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 2004, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population figures used in the final allocation in Fiscal Year 2005 for the formula social service funds are based on data on refugee arrivals for FYs 2002, 2003, and 2004 from the ORR Refugee Arrivals Data System (RADS), adjusted as of September 30, 2004, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Viet

Nam, Cuban and Haitian entrants, Havana parolees, asylees, and trafficking victims. Data on the number of asylees who have been served in FYs 2002, 2003, and 2004 through the refugee resettlement program or social service system are provided by States. Data on trafficking victims are taken from the total number of trafficking victims' certification and eligibility letters issued by ORR.

Consistent with States' requests, in Fiscal Year 2005, ORR implemented a new voluntary process for data submission by States prior to issuance of the proposed allocations in an effort to minimize adjustments of final allocations. Several States responded to this voluntary process, and submitted data following the standardized EXCEL format suggested by ORR to submit data on asylees, entrants, and/or family members of victims of a severe form of trafficking served during FY 2004. Data for each population group was submitted separately on an EXCEL spreadsheet. Data submitted by States were verified by ORR against the ORR arrival database (RADS), and adjustments made in this final notice of social service allocation for FY 2005.

Additionally, in FY 2005, ORR asked States to submit list of asylees served in their employment services programs. About 45,000 names were submitted. ORR matched these names and A–Numbers with the data that ORR had received from the U.S. Citizenship and Immigration Services (USCIS) and the Executive Office of Immigration Review (EOIR). However, only about 45 percent or 20,368 of the names submitted were found to match the records in the database. The primary reasons for the unmatched submissions were that the asylum claim was granted outside the five-year eligibility period, the A–Number did not appear in the ORR database, or the name submitted did not match the A–Number and name in the ORR database. The reason for the lack of the A–Number occurred when the head of household applied for asylum but failed to list his/her family members in the asylum claim. The family members eventually received derivative asylum status based upon the head of household claim. These family members may have received ORR-funded services, however, their names do not appear in the database of asylum claimants because they were not included in the initial asylum application of the head of household. Therefore, these individuals remain unverifiable.

As previously stated, ORR formula social service allocations for the States for FY 2005 are based on the numbers of refugee arrivals, Amerasians, entrants, Havana parolees, asylees, and victims of a severe form of trafficking. Refugee numbers are based upon the arrivals during the preceding FYs 2002, 2003, and 2004 adjusted as of September 30, 2004, for estimated secondary migration. The final allocations also reflect adjustments for family members of victims of severe forms of trafficking served in FY 2004, and asylees who have been served by the States in FYs 2002, 2003, and 2004 through the refugee resettlement program or social service system. Data on Havana parolees who entered the U.S. through a controlled process at the Port of Miami are also included in the final allocations. Data on entrants includes information on those who arrived in the U.S. through Miami, and information on those who have migrated from southern Florida and are receiving services in another State.

The data on secondary migration are based on data submitted by all participating States on Form ORR–11 on refugee and entrant secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 2004. The total migration reported by each State was due to ORR on January 5, 2005. Asylees and victims of trafficking data are not captured on the Form ORR–11, therefore, State's data on asylees, victims of trafficking and their family members accessing benefits and services after FY 2003 are used to ensure current information for allocations purposes. The total migration data from Form ORR–11 is summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure is applied to the State's total arrival figure, resulting in a revised ORR population figure. ORR calculations are developed separately for refugees and entrants and then combined into a total 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures. Havana parolees (HP's) are enumerated in a separate column in Table 1, below, because they are tabulated separately from other entrants. Havana parolee arrivals for all States are based on actual data.

Table 1 (attached) represents the FY 2005 final social service formula allocations. Column(1) reflects 3-year populations, as of October 1, 2004, of refugees, entrants (col. 2), asylees (col. 3), Havana parolees (col. 4), victims of trafficking (col. 5), total population, (col. 6), the formula amounts which the population yields (col. 7), the allocation (col. 8), elderly set-aside (col. 9), and total final allocations (col. 10).

V. Final Allocation Amounts

Funding subsequent to the publication of this final notice will be contingent upon the submission and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations.

VI. Paperwork Reduction Act

This notice does not create any reporting or record keeping requirements requiring OMB clearance.

Date/signed by Director: August 29, 2005.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

BILLING CODE 4184–01–P

FINAL FY 2005 SOCIAL SERVICES FORMULA NOTICE

Table 1.--Final Three-Year Refugee/Entrant/Asylee/Parolee/Trafficking Victim Populations of States Participating in the Refugee Resettlement Program and Final Social Service Formula Allocations for FY 2005 (Adjusted for Secondary Migration Based on the ORR-11)

State	1/ Refugees <1>	Entrants <2>	2/ Asylees <3>	3/ Havana Parolees <4>	Trafficking Victims <5>	Total population <6>	Final Formula Amount <7>	Final Allocation <8>	Elderly Set-aside <9>	Total Final Allocation <10>
Alabama 4/	124	6	0	23	-	153	61,189	91,193	2,364	93,557
Alaska 4/	104	1	31	0	-	136	54,390	84,394	2,188	86,582
Arizona	3,570	532	258	14	7	4,381	1,752,090	1,752,090	45,428	1,797,518
Arkansas	1	2	5	1	-	9	3,599	75,000	1,945	76,945
California 4/	14,795	108	3,406	79	64	18,452	7,379,497	7,379,496	191,331	7,570,827
Colorado 4/	1,683	3	199	9	-	1,894	757,466	757,466	19,640	777,106
Connecticut	1,018	13	210	30	-	1,271	508,310	508,310	13,180	521,490
Delaware	90	8	0	0	-	98	39,193	75,000	1,945	76,945
Dist. of Columbia	4	4	579	1	3	591	236,358	236,358	6,128	242,486
Florida	6,011	22,275	7,806	30,596	27	66,715	26,681,282	26,681,282	691,794	27,373,076
Georgia	4,257	36	331	119	5	4,748	1,898,864	1,898,864	49,234	1,948,098
Hawaii	2	0	0	0	8	10	3,999	75,000	1,945	76,945
Idaho 4/	819	2	9	1	3	834	333,541	333,541	8,648	342,189
Illinois	3,019	29	286	63	13	3,410	1,363,759	1,363,759	35,360	1,399,119
Indiana	775	5	0	12	-	792	316,744	316,744	8,213	324,957
Iowa	1,116	0	6	0	-	1,122	448,721	448,721	11,634	460,355
Kansas	263	1	0	11	-	275	109,981	109,981	2,852	112,833
Kentucky 4/	1,245	1,309	36	31	1	2,622	1,048,615	1,048,615	27,189	1,075,804
Louisiana	355	111	9	48	-	523	209,163	209,163	5,423	214,586
Maine	1,059	1	0	1	-	1,061	424,325	424,325	11,002	435,327
Maryland	2,014	15	1,567	14	6	3,616	1,446,144	1,446,144	37,496	1,483,640
Massachusetts 4/	2,818	103	514	18	4	3,457	1,382,556	1,382,556	35,847	1,418,403
Michigan	1,844	623	333	52	5	2,857	1,142,598	1,142,598	29,625	1,172,223
Minnesota	9,544	6	164	1	3	9,718	3,886,513	3,886,513	100,770	3,987,283
Mississippi	2	6	0	8	-	16	6,399	75,000	1,945	76,945
Missouri	2,237	23	119	10	3	2,392	956,631	956,631	24,804	981,435
Montana	38	0	0	0	-	38	15,197	75,000	1,945	76,945
Nebraska	815	2	0	2	-	819	327,542	327,542	8,493	336,035
Nevada 4/	676	766	0	69	4	1,515	605,893	605,893	15,710	621,603
New Hampshire	958	1	1	1	2	963	385,132	385,132	9,986	395,118
New Jersey	1,069	275	314	375	7	2,040	815,856	815,856	21,154	837,010
New Mexico	143	283	0	3	-	429	171,570	171,570	4,448	176,018
New York	6,528	1,332	1,463	115	106	9,544	3,816,925	3,816,925	98,966	3,915,891
North Carolina	3,071	15	418	65	1	3,570	1,427,748	1,427,748	37,019	1,464,767
North Dakota 4/	457	0	6	0	-	463	185,167	185,167	4,801	189,968
Ohio	4,775	3	180	6	2	4,966	1,986,049	1,986,049	51,494	2,037,543
Oklahoma	173	4	36	1	52	266	106,381	106,381	2,758	109,139
Oregon	2,717	422	66	3	1	3,209	1,283,373	1,283,373	33,275	1,316,648
Pennsylvania	3,688	553	494	33	5	4,773	1,908,862	1,908,862	49,493	1,958,355
Rhode Island	491	5	55	0	-	551	220,361	220,361	5,714	226,075
South Carolina	293	1	27	16	-	337	134,776	134,776	3,494	138,270
South Dakota 4/	814	0	5	4	-	823	329,142	329,142	8,534	337,676
Tennessee	1,458	13	0	60	-	1,531	612,292	612,292	15,876	628,168
Texas	5,381	1,501	871	99	61	7,913	3,164,640	3,164,640	82,053	3,246,693
Utah	1,330	6	90	1	-	1,427	570,699	570,699	14,797	585,496
Vermont	397	1	10	0	-	408	163,171	163,171	4,231	167,402
Virginia	2,452	437	548	37	12	3,486	1,394,153	1,394,153	36,148	1,430,301
Washington	9,354	0	0	7	7	9,368	3,746,538	3,746,538	97,141	3,843,679
West Virginia	2	0	0	0	-	2	800	75,000	1,945	76,945
Wisconsin	2,148	5	23	3	-	2,179	871,446	871,446	22,595	894,041
Wyoming 5/										
TOTAL	107,997	30,847	20,475	32,042	412	191,773	76,695,640	77,136,460	2,000,000	79,136,460

1/ Includes Amerasian immigrants. Adjusted for secondary migration, as calculated from the Refugee State-or-Origin Report (ORR-11).

2/ Asylee counts are submitted by States and verified by matching against data from the Department of Justice/Executive Office of Immigration Review, and the U.S. Citizenship and Immigration Service.

3/ For all years, Havana Parolee arrivals for all States are based on actual data.

4/ The allocations for the States of Alabama, Alaska, Colorado, Idaho, Kentucky, Massachusetts, Nevada, North Dakota, and South Dakota, and for the county of San Diego, California are expected to be awarded to Wilson/Fish projects.

5/ Wyoming no longer participates in the Refugee Resettlement Program.

[FR Doc. 05–17372 Filed 8–31–05; 8:45 am]

BILLING CODE 4184–01–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21093]

Notification of the Removal of Conditions of Entry for Certain Vessels Arriving to the United States

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy.

SUMMARY: The Coast Guard announces that conditions of entry are no longer being imposed on vessels arriving from the country of Nauru.

DATES: The policy announced in this notice is effective on August 1, 2005

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. This notice will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket, including this notice, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Lieutenant Galia Kaplan, Coast Guard, telephone 202–366–2591.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 70110 of the Maritime Transportation Security Act provides that the Secretary of Homeland Security may impose conditions of entry into the United States from ports that are not maintaining effective anti-terrorism measures. The Coast Guard has been delegated the authority by the Secretary to carry out the provisions of this section. On May 2, 2005, the Coast Guard published a Notice of policy in the **Federal Register**, (70 FR 22668) announcing that it had determined that ports in Nauru, among other countries, were not maintaining effective anti-terrorism measures, and imposed conditions of entry. Based on recent information, the Coast Guard has determined that Nauru is now maintaining effective anti-terrorism measures, and is accordingly removing the conditions of entry announced in its previously published notice of policy.

Dated: August 9, 2005.

C.E. Bone,

Rear Admiral, USCG, Director of Port Security.

[FR Doc. 05–17384 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Documents Required Aboard Private Aircraft

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Documents Required Aboard Private Aircraft. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 31, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to CBP, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2–C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to CBP, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1651–0058.

Form Number: N/A.

Abstract: The documents required by CBP regulations for private aircraft arriving from foreign countries pertain only to baggage declarations, and if applicable, to Overflight authorizations. CBP also requires that the pilots present documents required by FAA to be on the plane.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 1 minutes.

Estimated Total Annual Burden Hours: 2,490.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 25, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–17445 Filed 8–31–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Petition for Remission or Mitigation of Forfeitures and Penalties

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Petition for Remission or Mitigation of Forfeitures and Penalties. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 28316) on May 17, 2005, allowing for a 60-day

comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Petition for Remission or Mitigation of Forfeitures and Penalties.

OMB Number: 1651–0100.

Form Number: CBP Form 4609.

Abstract: Persons whose property is seized or who incur monetary penalties due to violations of the Tariff Act are entitled to seek remission or mitigation by means of an informal appeal. This form gives the violator the opportunity to claim mitigation and provides a record of such.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 28,000.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 6,500.

Estimated Annualized Cost to the Public: $157,300.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: August 24, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–17446 Filed 8–31–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

RIN 1660–ZA06

Flood Insurance Training and Education Requirements for Insurance Agents

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: FEMA is publishing minimum training and education requirements, as required by section 207 of the Flood Insurance Reform Act of 2004, for all insurance agents who sell Standard Flood Insurance Policies issued through the National Flood Insurance Program (NFIP).

FOR FURTHER INFORMATION CONTACT: Mr. Edward L. Connor, Federal Emergency Management Agency, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3429 (phone), (202) 646–2849 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On June 30, 2004 the President signed the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (Flood Insurance Reform Act of 2004), Pub. L. 108–264. Section 207 of the Flood Insurance Reform Act of 2004 states:

> The Director of the Federal Emergency Management Agency shall, in cooperation with the insurance industry, State insurance regulators, and other interested parties—
>
> (1) Establish minimum training and education requirements for all insurance agents who sell flood insurance policies, and
>
> (2) Not later than 6 months after the date of enactment of this Act, publish these requirements in the **Federal Register**, and inform insurance companies and agents of the requirements.

This notice describes FEMA's implementation of section 207 of the Flood Insurance Reform Act of 2004. As required by the Act, FEMA has coordinated with the State insurance regulators, the insurance industry, and other interested parties. Input received from these organizations emphasizes the value of working through the State insurance departments to avoid establishing conflicting or burdensome training requirements upon insurance agents. While implementing the minimum training requirements required by section 207, FEMA has been mindful of the Senate Report language, (S. REP. NO. 108–262, at 4 & 9 (2004)), which cautions:

> In some cases, states may already have requirements to ensure that agents are well-versed in the flood insurance program. Where possible, FEMA should work to make sure that agents are not burdened with inconsistent state and federal training and education requirements. In addition, where possible, FEMA should work to implement the training requirements through the states, which already have continuing education processes in place.

Under 15 U.S.C. 1011 *et seq.*, commonly referred to as the ''McCarran-Ferguson Act'', section 6701, States have the authority to establish qualification standards by which insurance agents are licensed to do business and to determine the continuing education requirements for maintaining such licenses in the particular jurisdiction. However, the McCarran-Ferguson Act specifically excludes from State regulation an insurance program carried out by the Federal Government, including the NFIP, and FEMA lawfully may establish specific standards to sell flood insurance under the NFIP. Rather than establish separate, and, perhaps duplicative requirements, FEMA has chosen to work with States to ensure that NFIP requirements are implemented through established (existing) licensing schemes. For example, several States already include questions about flood insurance on their agent licensing examinations, and some also award continuing education credits for agents who complete flood insurance training. It is our intent to encourage States to implement minimum training in NFIP flood insurance as part of their general licensing standards and to assist

States in improving their training and testing of agents on flood insurance matters as appropriate.

FEMA is committed to actively supporting the States in implementing their flood insurance training programs for insurance agents and will, in support of that commitment, provide: expertise regarding the content of a flood insurance training program that would enable insurance agents to have a basic understanding of the NFIP; access to NFIP training modules, including online modules; and, NFIP materials and other technical assistance as may be needed to address unique requirements. Further, as FEMA establishes policy or procedural changes or enhancements that should be reflected in State-approved flood insurance training programs, these will be provided by FEMA to the State insurance departments.

FEMA will work with State insurance departments that do not already have established flood insurance training programs for insurance agents to implement the guidance provided by the National Conference of Insurance Legislators (NCOIL). The ''State Flood Disaster Mitigation and Relief Model Act'' adopted by the NCOIL Executive Committee on November 21, 2003, includes the following text that States will find useful when adopting their flood insurance requirements:

Part IV. Miscellaneous Provisions Regarding Participation

Sec. 1. Insurance Producer Qualification; Continuing Education

The *[State entity for regulating insurance]* shall require:

1. *Pre-licensing requirement.* The *[State entity for regulating insurance]* shall require all resident insurance producer applicants to demonstrate satisfactory knowledge and understanding of flood insurance and the National Flood Insurance Program, as determined by the *[State entity for regulating insurance]* in order to qualify for licensure.

2. *One-time continuing education requirement for existing licensees.* The *[State entity for regulating insurance]* shall require resident insurance producers licensed on *[the bill's effective date]* to complete a continuing education course related to flood insurance and the National Flood Insurance Program before *[a date certain at least two years from the bill's effective date]*. The course shall be three hours in length and shall be approved by the *[State entity for regulating insurance]*. Completion of the course will provide the licensee with three hours of continuing education credit.

Incentives for Trained Agents

FEMA offers various incentives to encourage insurance agents to pursue flood insurance training. The NFIP's Agent Co-op Program provides agents, Write Your Own (WYO) companies, and insurance associations with the advertising tools they need to produce local and regional advertising that supports the national NFIP campaign. Insurance agents who participate in the program are reimbursed a portion of their advertising budget when they use the program's pre-approved ad templates. An additional 25 percent in co-op funds are offered to agents who complete a State-approved continuing education course on flood insurance within the past 12 months. Details are provided at *http://www.FloodSmart.gov*.

Additionally, agents who sign up for the NFIP's Agent Leads Referral program receive free leads generated through the NFIP marketing efforts. Plans are being developed to enable agents who have completed flood insurance training to be given a special designation or priority in the distribution of leads.

Flood Insurance Course Content

The following material outlines the standard content that States should include when establishing or updating their flood insurance training requirements. This outline reflects input gathered by FEMA from the following: State insurance regulators; insurance companies that sell flood insurance under the NFIP's WYO Program; the Independent Insurance Agents and Brokers of America; the National Association of Professional Insurance Agents; and the Coalition of Exclusive Agent Associations. This training course content, if effectively delivered, would enable insurance agents to gain a basic understanding of the NFIP, so that they could share this information with their customers. Additional training should be taken by insurance agents on a regular basis to gain understanding of more advanced flood insurance topics.

Basic Flood Insurance Course Outline

Section I—Introduction

- NFIP Background
- Community Participation
- Emergency Program Defined
- Regular Program Defined
- Community Rating System
- Eligible/Ineligible Buildings
- Coastal Barrier Resources System and Other Protected Areas
- Who Needs Flood Insurance?
  - Mandatory Purchase of Flood Insurance in High Flood Risk Zones
  - Recommended in Moderate and Low Flood Risk Zones
- Why Flood Insurance is Better than Disaster Assistance

Section II—Flood Maps and Zone Determinations

- Flood Hazard Boundary Map (FHBM)
- Flood Insurance Rate Map (FIRM)
  - Pre-FIRM/Post-FIRM Defined
  - Special Flood Hazard Area Defined
- Base Flood Elevation
- Zone Determination

Section III—Policies and Products Available

- Dwelling Policy—Types of Buildings Covered
- General Property Policy—Types of Buildings Covered
- Residential Condominium Building Association (RCBAP) Policy—Types of Buildings Covered
- Preferred Risk Policy—Types of Buildings Covered
- Definitions:
  - Flood
  - Basement/Enclosure
  - Elevated Buildings
- Damages Not Covered
  - Single Peril Policy
  - Mudslides vs. Mudflow
- Property Covered
  - Basements
  - Appurtenant Structure
  - Loss Avoidance Measures
  - Debris Removal
  - Improvements and Betterments
- Property Not Covered
  - Decks
  - Finished Items in Basements
  - In Enclosures
  - Additional Living Expenses
- Increased Cost of Compliance Coverage

Section IV—General Rules

- Statutory Coverage Limits
- Deductibles
  - Standard Deductibles
  - Applies Separately for Building and Contents
- Property Value Determination for Selecting Coverage Amount
- Loss Settlement
  - Actual Cash Value (ACV)
  - Replacement Cost Value (RCV)
  - Co-insurance Penalty in RCBAP
- Reduction and Reformation of Coverage
- No Binders
- One Building per Policy—No Blanket Coverage
- Building and Contents Coverage Purchased Separately
- Waiting Period/Effective Date of Policy
- Policy Term
- Cancellations

Section V—Rating

- Types of Buildings
  - Elevated Buildings

- Buildings with Basements
- When to Use an Elevation Certificate
- Grandfathering

Section VI—Claims Handling Process

- Helping Your Client to File a Claim
- Appeals Process
- Claims Handbook

Section VII—Requirements of the Flood Insurance Reform Act of 2004

- Point of Sale and Renewal Responsibilities
- Notification of Coverages Being Purchased
- Policy Exclusions that Apply
- Explanation Regarding How Losses Will be Adjusted (ACV vs. RCV)
- Number and Dollar Amount of Claims for Property
- Acknowledgement Forms

Section VIII—Agent Resources

- Write Your Own Company
- FEMA Web sites:
- *http://www.fema.gov/nfip*
- *http://www.floodsmart.gov*
- *http://training.nfipstat.com*
- Flood Insurance Manual

Dated: August 25, 2005.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–17444 Filed 8–31–05; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Aviation Security Advisory Committee Meeting

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Aviation Security Advisory Committee (ASAC).

DATES: The meeting will take place on September 22, 2005, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at Residence Inn by Marriott Pentagon City, 550 Army Navy Drive, Arlington VA 22202.

FOR FURTHER INFORMATION CONTACT: Joseph Corrao, Office of Transportation Security Policy (TSA–9), Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202; telephone 571–227–2980, e-mail *joseph.corrao@dhs.gov.*

SUPPLEMENTARY INFORMATION: This meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The agenda for the meeting will include—

- Status reports on the actions of the Airport Security Design Guidelines Working Group, the Aviation Security Impact Assessment Working Group, and the Freight Assessment System Working Group;
- The final report and recommendations of the Secure Flight Privacy/IT Working Group; and
- Other aviation security topics.

This meeting is open to the public but attendance is limited to space available. Members of the public must make advanced arrangements to present oral statements at the open ASAC meeting. Written statements may be presented to the committee by providing copies of them to the person listed under the heading **FOR FURTHER INFORMATION CONTACT** prior to or at the meeting. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Arlington, Virginia, on August 25, 2005.

Joseph Corrao,

Designated Federal Official.

[FR Doc. 05–17393 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of a permit application.

SUMMARY: The following applicant has applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit request.

DATES: Comments on this permit application must be received on or before October 3, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the permit number for the application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the address above. Please refer to the permit number for the application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–108507

Applicant: Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service, Sacramento, California.

The applicant requests a permit to take the following species: the short-tailed albatross (*Phoebastria* (=*Diomedea*) *albatrus*), Mount Hermon June beetle (*Polyphylla barbata*), Behren's silverspot butterfly (*Speyeria zerene behrensii*), callippe silverspot butterfly (*Speyeria callippe callippe*), El Segundo blue butterfly (*Euphilotes battoides allyni*), Lange's metalmark butterfly (*Apodemia mormo langei*), lotis blue butterfly (*Lycaeides argyrognomon lotis*), mission blue butterfly (*Icaricia icarioides missionensis*), Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*), Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*), Quino checkerspot butterfly (*Euphydryas editha quino*), San Bruno elfin butterfly (*Callophrys mossii bayensis*), Smith's blue butterfly (*Euphilotes enoptes smithi*), bonytail chub (*Gila elegans*), Mohave tui chub (*Gila bicolor mohavensis*), Owens tui chub (*Gila bicolor snyderi*), Pahranagat roundtail chub (*Gila robusta jordani*), Cui-ui (*Chasmistes cujus*), Ash Meadows speckled dace (*Rhinichthys osculus nevadensis*), Clover Valley dace speckled (*Rhinichthys osculus oligoporus*), Independence Valley speckled dace (*Rhinichthys osculus lethoporus*), Moapa dace (*Moapa coriacea*), California condor (*Gymnogyps californianus*), Shasta crayfish (*Pacifastacus fortis*),

Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*), southwestern willow flycatcher (*Empidonax traillii extimus*), San Joaquin kit fox (*Vulpes macrotis mutica*), San Miguel Island fox (*Urocyon littoralis littoralis*), Santa Catalina Island fox (*Urocyon littoralis catalinae*), Santa Cruz Island fox (*Urocyon littoralis santacruzae*), Santa Rosa Island fox (*Urocyon littoralis santarosae*), mountain yellow-legged frog southern California distinct population segment (*Rana muscosa*), tidewater goby (*Eucyclogobius newberryi*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), Fresno kangaroo rat (*Dipodomys nitratoides exilis*), giant kangaroo rat (*Dipodomys ingens*), Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*), San Bernardino Merriam's kangaroo rat, (*Dipodomys merriami parvus*), Stephens' kangaroo rat [*Dipodomys stephens*i (incl. *D. cascus*)], Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), blunt-nosed leopard lizard (*Gambelia silus*), Point Arena mountain beaver (*Aplodontia rufa nigra*), Pacific pocket mouse (*Perognathus longimembris pacificus*), salt marsh harvest mouse (*Reithrodontomys raviventris*), marbled murrelet (*Brachyramphus marmoratus marmoratus*), brown pelican (*Pelecanus occidentalis*), Pikeminnow (=squawfish) (*Ptychocheilus lucius*), Pahrump poolfish (*Empetrichthys latos*), Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*), desert pupfish (*Cyprinodon macularius*), Devils Hole pupfish (*Cyprinodon diabolis*), Warm Springs pupfish (*Cyprinodon nevadensis pectoralis*), Owens pupfish (*Cyprinodon radiosus*), riparian brush rabbit (*Sylvilagus bachmani riparius*), California clapper rail (*Rallus longirostris obsoletus*), light-footed clapper rail (*Rallus longirostris levipes*), Yuma clapper rail (*Rallus longirostris yumanensis*), desert slender salamander (*Batrachoseps aridus*), Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*), green sea turtle (*Chelonia mydas*), leatherback sea turtle (*Dermochelys coriacea*), loggerhead sea turtle (*Caretta caretta*), Peninsular ranges distinct population segment of the bighorn sheep (*Ovis canadensis*), Sierra Nevada distinct population segment of the bighorn sheep (*Ovis canadensis californiana*), Buena Vista Lake ornate shrew (*Sorex ornatus relictus*), San Clemente loggerhead shrike (*Lanius ludovicianus mearnsi*), California freshwater shrimp (*Syncaris pacifica*), Carson wandering skipper (*Pseudocopaeodes eunus obscurus*), Laguna Mountains skipper (*Pyrgus ruralis lagunae*), Morro shoulderband snail (=Banded dune) (*Helminthoglypta walkeriana*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), White River spinedace (*Lepidomeda albivallis*), Hiko White River springfish (*Crenichthys baileyi grandis*), White River springfish (*Crenichthys baileyi baileyi*), unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), Lost River sucker (*Deltistes luxatus*), Modoc sucker (*Catostomus microps*), razorback sucker (*Xyrauchen texanus*), shortnose sucker (*Chasmistes brevirostris*), vernal pool tadpole shrimp (*Lepidurus packardi*), California least tern (*Sterna antillarum browni*), Ohlone tiger beetle (*Cicindela ohlone*), arroyo toad (=arroyo southwestern) [*Bufo californicus* (=*microscaphus*)], woundfin (*Plagopterus argentissimus*), least Bell's vireo (*Vireo bellii pusillus*), Amargosa vole (*Microtus californicus scirpensis*), and the riparian woodrat (=San Joaquin Valley) (*Neotoma fuscipes riparia*); and to remove/reduce to possession the following species: *Acanthomintha ilicifolia* (San Diego thornmint), *Allium munzii* (Munz's onion), *Alopecurus aequalis* var. *sonomensis* (Sonoma alopecurus), *Ambrosia pumila* (San Diego ambrosia), *Amsinckia grandiflora* (large-flowered fiddleneck), *Arabis hoffmannii* (Hoffmann's rock-cress), *Arabis mcdonaldiana* (McDonald's rock-cress), *Arctostaphylos confertiflora* (Santa Rosa Island manzanita), *Arctostaphylos glandulosa* ssp. *crassifolia* (Del Mar manzanita), *Arctostaphylos hookeri* var. *ravenii* (Presidio manzanita), *Arenaria paludicola* (Marsh sandwort), *Astragalus albens* (Cushenbury milk-vetch), *Astragalus brauntonii* (Braunton's milk-vetch), *Astragalus clarianus* (Clara Hunt's milk-vetch), *Astragalus jaegerianus* (Lane Mountain milk-vetch), *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch), *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh milk-vetch), *Astragalus tener* var. *titi* (coastal dunes milk-vetch), *Astragalus tricarinatus* (triple-ribbed milk-vetch), *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale), *Berberis nevinii* (Nevin's barberry), *Berberis pinnata* ssp. *insularis* (island barberry), *Blennosperma bakeri* (Sonoma sunshine), *Calystegia stebbinsii* (Stebbins' morning-glory), *Carex albida* (white sedge), *Castilleja affinis* ssp. *neglecta* (Tiburon paintbrush), *Castilleja grisea* (San Clemente Island Indian paintbrush), *Castilleja mollis* (soft-leaved paintbrush), *Caulanthus californicus* (California jewelflower), *Ceanothus ferrisae* (coyote ceanothus), *Ceanothus roderickii* (Pine Hill ceanothus), *Cercocarpus traskiae* (Catalina Island mountain-mahogany), *Chorizanthe howellii* (Howell's spineflower), *Chorizanthe orcuttiana* (Orcutt's spineflower), *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower), *Chorizanthe robusta* (incl. vars. *robusta* and *hartwegii*) [Robust spineflower (incl. Scotts Valley)], *Chorizanthe valida* (Sonoma spineflower), *Cirsium fontinale* var. *fontinale* (fountain thistle), *Cirsium fontinale* var. *obispoense* (Chorro Creek bog thistle), *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle), *Cirsium loncholepis* (La Graciosa thistle), *Clarkia franciscana* (Presidio clarkia), *Clarkia imbricata* (Vine Hill clarkia), *Clarkia speciosa* ssp. *immaculata* (Pismo clarkia), *Cordylanthus maritimus* ssp. *maritimus* (salt marsh bird's-beak), *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak), *Cordylanthus palmatus* (palmate-bracted bird's beak), *Cordylanthus tenuis* ssp. *capillaris* (Pennell's bird's-beak), *Cupressus abramsiana* (Santa Cruz cypress), *Deinandra increscens* ssp. *villosa* (Gaviota tarplant), *Delphinium bakeri* (Baker's larkspur), *Delphinium luteum* (yellow San Clemente Island larkspur), *Delphinium variegatum* ssp. *kinkiense* (San Clemente Island larkspur), *Dodecahema leptoceras* (slender-horned spineflower), *Dudleya setchellii* (Santa Clara Valley dudleya), *Dudleya traskiae* (Santa Barbara Island liveforever), *Eremalche kernensis* (Kern mallow), *Eriastrum densifolium* ssp. *sanctorum* (Santa Ana River woolly-star), *Eriodictyon altissimum* (Indian Knob mountain balm), *Eriodictyon capitatum* (Lompoc yerba santa), *Eriogonum apricum* (incl. var. *prostratum*) (Ione (incl. Irish Hill) buckwheat), *Eriogonum ovalifolium* var. *vineum* (cushenbury buckwheat), *Eriogonum ovalifolium* var. *williamsiae* (steamboat buckwheat), *Eriophyllum latilobum* (San Mateo woolly sunflower), *Eryngium aristulatum* var. *parishii* (San Diego button-celery), *Eryngium constancei* (Loch Lomond coyote thistle), *Erysimum capitatum* var. *angustatum* (Contra Costa wallflower), *Erysimum menziesii* (Menzies' wallflower), *Erysimum teretifolium* (Ben Lomond wallflower), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill

flannelbush), *Fremontodendron mexicanum* (Mexican flannelbush), *Galium buxifolium* (island bedstraw), *Galium californicum* ssp. *sierrae* (El Dorado bedstraw), *Gilia tenuiflora* ssp. *arenaria* (Monterey gilia), *Gilia tenuiflora* ssp. *hoffmannii* (Hoffmann's slender-flowered gilia), *Lasthenia burkei* (Burke's goldfields), *Lasthenia conjugens* (Contra Costa goldfields), *Layia carnosa* (beach layia), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), *Lessingia germanorum* (=*L.g.* var. *germanorum*) (San Francisco lessingia), *Lilium occidentale* (Western lily), *Lilium pardalinum* ssp. *pitkinense* (Pitkin Marsh lily), *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam), *Limnanthes vinculans* (Sebastopol meadowfoam), *Lithophragma maximum* (San Clemente Island woodland-star), *Lotus dendroideus* ssp. *traskiae* (San Clemente Island broom), *Lupinus nipomensis* (Nipomo Mesa lupine), *Lupinus tidestromii* (clover lupine), *Malacothamnus clementinus* (San Clemente Island bush-mallow), *Malacothamnus fasciculatus* var. *nesioticus* (Santa Cruz Island bush-mallow), *Malacothrix indecora* (Santa Cruz Island malacothrix), *Malacothrix squalida* (island malacothrix), *Monardella linoides* ssp. *viminea* (willowy monardella), *Monolopia* (=*Lembertia*) *congdonii* (San Joaquin wooly-threads), *Navarretia leucocephala* ssp. *pauciflora* (=*N. pauciflora*) (few-flowered navarretia), *Navarretia leucocephala* ssp. *plieantha* (many-flowered navarretia), *Nitrophila mohavensis* (Amargosa niterwort), *Oenothera avita* ssp. *eurekensis* (Eureka Valley evening-primrose), *Oenothera deltoides* ssp. *howellii* (Antioch Dunes evening-primrose), *Opuntia treleasei* (Bakersfield cactus), *Orcuttia californica* (California orcutt grass), *Orcuttia pilosa* (hairy orcutt grass), *Orcuttia viscida* (Sacramento orcutt grass), *Oxytheca parishii* var. *goodmaniana* (cushenbury oxytheca), *Parvisedum leiocarpum* (Lake County stonecrop), *Pentachaeta bellidiflora* (white-rayed pentachaeta), *Pentachaeta lyonii* (Lyon's pentachaeta), *Phacelia insularis* ssp. *insularis* (island phacelia), *Phlox hirsuta* (Yreka phlox), *Piperia yadonii* (Yadon's piperia), *Plagiobothrys strictus* (Calistoga allocarya), *Poa atropurpurea* (San Bernardino bluegrass), *Poa napensis* (Napa bluegrass), *Pogogyne abramsii* (San Diego mesa-mint), *Pogogyne nudiuscula* (Otay mesa-mint), *Polygonum hickmanii* (Scotts Valley polygonum), *Potentilla hickmanii* (Hickman's potentilla), *Pseudobahia bahiifolia* (Hartweg's golden sunburst), *Rorippa gambellii* (Gambel's watercress), *Sibara filifolia* (Santa Cruz Island rockcress), *Sidalcea keckii* (Keck's checker-mallow), *Sidalcea oregana* ssp. *valida* (Kenwood Marsh checker-mallow), *Sidalcea pedata* (pedate checker-mallow), *Streptanthus albidus* ssp. *albidus* (Metcalf Canyon jewelflower), *Streptanthus niger* (Tiburon jewelflower), *Suaeda californica* (California seablite), *Swallenia alexandrae* (Eureka Dune grass), *Taraxacum californicum* (California taraxacum), *Thelypodium stenopetalum* (slender-petaled mustard), *Thlaspi californicum* (Kneeland Prairie penny-cress), *Thysanocarpus conchuliferus* (Santa Cruz Island fringepod), *Trifolium amoenum* (showy Indian clover), *Trifolium trichocalyx* (Monterey clover), *Tuctoria greenei* (Greene's tuctoria), and *Tuctoria mucronata* (Solano grass) in conjunction with recovery efforts throughout the range of the species in California and Nevada for the purpose of enhancing their survival and propagation.

We solicit public review and comment on this recovery permit application.

Dated: August 16, 2005.

Michael Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 05–17406 Filed 8–31–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–DES–05–40]

Carlsbad Project, New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability and Notice of Public Meetings for the Draft Environmental Impact Statement for Carlsbad Project Water Operations and Water Supply Conservation.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) and the New Mexico Interstate Stream Commission, as joint lead agencies, have prepared a draft environmental impact statement (DEIS) to assess the consequences of proposed changes in the operation of Sumner Dam and the implementation of a water acquisition program in the Pecos River Basin. The Carlsbad Project Water Operations and Water Supply Conservation DEIS includes a description of alternative means of implementing the proposed federal action and presents an evaluation of the environmental, economic, and social consequences that could result from implementing these alternatives.

These proposed changes in water operations are designed to conserve the Pecos bluntnose shiner (*Notropis simus pecosensis*) (shiner) and its designated critical habitat. The water acquisition program is proposed to conserve the Carlsbad Project water supply. In 1987, the U.S. Fish and Wildlife Service listed the shiner, a small minnow, as a threatened species and designated two noncontiguous river reaches, totaling approximately 101 miles of the Pecos River, as critical habitat. The shiner has undergone significant population declines and range contraction in the last 65 years and is now restricted to about 194 miles from Fort Sumner State Park to Brantley Reservoir. Lower base flows, lower peak flows, and extended duration of peak flows along with river channel degradation, drought, and intermittency have contributed to loss of habitat and increased mortality (U.S. Fish and Wildlife Service, 2003).

DATES: A 60-day public review period commences with the publication of this notice. Written comments on the DEIS should be submitted no later than October 31, 2005, to Ms. Marsha Carra, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102.

Reclamation will conduct four public meetings to obtain public input on the DEIS. All meetings will take place from 7 p.m. to 9 p.m. The public meetings schedule is as follows:

- September 19, 2005—Bureau of Land Management Conference Room, 2909 West 2nd Street, Roswell, New Mexico
- September 20, 2005—Pecos River Village Conference Center, Room 3, 711 Muscatel, Carlsbad, New Mexico
- September 21, 2005—Village Community House, 204 North 4th Street, Ft. Sumner, New Mexico
- September 22, 2005—City Hall Meeting Room, 141 5th Street, Santa Rosa, New Mexico

ADDRESSES: Copies of the DEIS are available for public inspection and review at the following locations:

- Albuquerque Main Library, 501 Copper NW., Albuquerque, New Mexico 87102
- Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102
- Carlsbad Irrigation District, 201 South Canal Street, Carlsbad, New Mexico 88220

The DEIS is also available on the Internet at the following Web address: *http://www.usbr.gov/uc/albuq/library/eis/carlsbad/carlsbad.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Marsha Carra, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102; telephone (505) 462–3602; facsimile (505) 462–3780; e-mail: *mcarra@uc.usbr.gov* or Ms. Coleman Smith, New Mexico Interstate Stream Commission, P.O. Box 25102, Santa Fe, New Mexico 87504; telephone (505) 476–0551, e-mail: *coleman.smith@state.nm.us*.

SUPPLEMENTARY INFORMATION: The purpose of Reclamation's proposed federal action is to avoid jeopardy to the Pecos bluntnose shiner and to conserve the Carlsbad Project water supply. To avoid jeopardy to the shiner means that Reclamation would ensure that any discretionary action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. Reclamation would continue to participate in interagency actions to protect federally-listed species and designated critical habitats, within their legal and discretionary authority. Conserving the Carlsbad Project water supply means delivering the amount of water to the project that would otherwise be available but for changes to operations. The need for Reclamation's action is to operate the Pecos River facilities so as not to jeopardize the continued existence of the shiner or destroy or adversely modify designated critical habitat and to maintain the Carlsbad Project water supply for authorized purposes. Without reoperation of Sumner Dam, stream flows in the Pecos River may be insufficient to meet basic habitat needs of the shiner and the future existence of the shiner may be in jeopardy. Without an accompanying program to acquire and provide water, reductions to the Carlsbad Project water supply would occur.

The proposed federal action that requires NEPA compliance is the reoperation of Sumner Dam to provide flows in the Pecos River to conserve the shiner, and the implementation of a water acquisition program to conserve the Carlsbad Project water supply. The alternatives vary in flow targets or minimum flows at the Taiban or Acme gages. Depending on the alternative, these targets can be constant or variable by time of year or whether river conditions are dry, average, or wet. Action alternatives also include common guidance for block releases, a habitat conservation pool, an adaptive management plan, and implementation of an interagency management agreement. Reduction to Carlsbad Project water resulting from changes in operations to conserve the shiner would be offset through a variety of options that are analyzed independently of the alternatives. Other options have been developed to acquire water to directly augment river flows for the benefit of the shiner. Implementation of some of these options would require additional authorization, permitting, and project-specific NEPA analysis.

After the 60-day waiting period, Reclamation will complete a final environmental impact statement (FEIS). Responses to comments received from organizations and individuals on the DEIS will be addressed in the FEIS.

Public Disclosure

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: August 25, 2005.

William E. Rinne,

Deputy Commissioner, Bureau of Reclamation.

[FR Doc. 05–17265 Filed 8–31–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–696 (Second Review)]

Pure Magnesium From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on pure magnesium from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is October 21, 2005. Comments on the adequacy of responses may be filed with the Commission by November 14, 2005. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On May 12, 1995, the Department of Commerce issued an antidumping duty order on imports of pure magnesium from China (60 FR 25691). Following five-year reviews by Commerce and the Commission, effective October 27, 2000, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium from China (65 FR 64422). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 05–5–138, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Like Product* as all pure magnesium, including off-specification (''off-spec'') pure magnesium,[2] coextensive with Commerce's scope definition. One Commissioner defined the *Domestic Like Product* differently in the original investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Industry* as all producers of pure magnesium, including off-spec pure magnesium, coextensive with Commerce's scope definition. One Commissioner defined the *Domestic Industry* differently in the original investigation.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 14, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the

[2] Off-spec pure magnesium is magnesium containing between 50 percent and 99.8 percent primary magnesium, by weight, that does not conform to ASTM specifications for alloy magnesium. Off-spec pure magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium, or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. It generally does not contain, individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths.

explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1999.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 29, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–17441 Filed 8–31–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–540 and 541 (Second Review)]

Certain Welded Stainless Steel Pipe From Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on certain welded stainless steel pipe from Korea and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on certain welded stainless steel pipe from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is October 21, 2005. Comments on the adequacy of responses may be filed with the Commission by November 14, 2005. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On December 30, 1992, the Department of Commerce issued antidumping duty orders on imports of welded ASTM A–312 stainless steel pipe from Korea (57 FR 62301) and Taiwan (57 FR 62300). Following five-year reviews by Commerce and the Commission, effective October 16, 2000, Commerce issued a continuation of the antidumping duty orders on imports of certain welded stainless steel pipe from Korea and Taiwan (65 FR 61143). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Korea and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and full five-year review determinations, the Commission defined the *Domestic Like Product* as welded stainless steel pipes and pressure tubes, excluding grade 409 tubes and mechanical tubes (also known as ornamental tubes).

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full five-year review determinations, the Commission defined the *Domestic Industry* as producers of welded stainless steel pipes and pressure tubes, excluding grade 409 tubes and mechanical tubes (also known as ornamental tubes).

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 05–5–139, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is November 14, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be provided in response to this notice of institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1999.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 29, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–17440 Filed 8–31–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on August 17, 2005, a proposed Consent Decree in *United Stated* v. *Carrier Corporation,* CV 05–6022 ABC (RCx) (C.D. Cal.), was lodged with the United States District Court for the Central District of California.

The Consent Decree resolves claims against Carrier Corporation (''Carrier'') brought by the United States on behalf of the Environmental Protection Agency (''EPA'') under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, as amended (''RCRA''), 42 U.S.C. 6973, for the performance of response actions and for the reimbursement of response costs incurred and to be incurred by EPA in connection with the release and threatened release of hazardous substances at the Puente Valley Operable Unit of the San Gabriel Valley Superfund Site, Area 4 (''Site'') in Los Angeles County, California.

Under the proposed Consent Decree, Carrier and its parent corporation, United Technologies Corporation (together, ''Settling Defendants''), will perform a portion of the interim remedy for the Site. Specifically, Settling Defendants will construct a shallow groundwater zone remediation system and operate that system for eight years once the system is operational and functional. In addition, Settling Defendants will reimburse the United States a portion of past response costs and pay future oversight costs incurred by EPA related to the work. Additionally, the Consent Decree requires payment of a civil penalty for noncompliance with an EPA cleanup order issued to Carrier, performance of a supplemental environmental project in further mitigation of that penalty, and monitoring of upgradient contamination for a period of eight years.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, with a copy to Matthew A. Fogelson, Trial Attorney, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 301 Howard Street, Suite 1050, San Francisco, CA 94105, and should refer to *United States* v. *Carrier Corporation,* CV 05–6022 ABC (RCx), DOJ Ref. #90–11–2–354/15. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, Civil Division, c/o AUSA Suzette Clover, 300 North Los Angeles Street, Room 7516, Los Angeles, California 90012. During the public comment period, the Consent Decree may be examined on the Department of Justice Web site at *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov)*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please refer to *United States* v. *Carrier Corporation,* CV 05–6022 ABC (RCx), DOJ Ref. #90–11–2–354/15, and enclose a check in the amount of $77.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. To receive the Consent Decree without the Appendices, pay $19.75.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 05–17375 Filed 8–31–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

On August 25, 2005, Notice of Lodging of a Consent Decree was published in the **Federal Register** (Volume 70, Number 164, Page 49950–49951). That Notice contains a typographical error; the inclusion of the word ''million'' after ''$500,000.'' The following is the corrected Notice.

In accordance with Departmental Policy, 28 U.S.C. 50.7, notice is hereby given that on August 18, 2005, a proposed Consent Decree in *United States* v. *Cosmed Group, Inc.,* Civil Action No. 05353ML, was lodged with the United States District Court for the District of Rhode Island.

In this action the United States, on behalf of the United States Environmental Protection Agency (''EPA''), filed a complaint against Cosmed Group, Inc. (''Cosmed'') alleging various violations of the Clean Air Act and the Illinois State Implementation Plan, concerning Cosmed's current or former facilities in Coventry, RI, South Plainfield, NJ, Baltimore, MD, Waukegan, IL, Grand

Prairie, TX, and San Diego, CA. Under the terms of the proposed settlement, Cosmed will pay a civil penalty of $500,000 and fund Supplemental Environmental Projects providing environmental and public health benefits in and around Camden, NJ, Lake County, IL, Dallas, TX, and San Diego, CA at a cost of $1 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Cosmed Group, Inc.,* D.J. Ref. 90–5–2–1–08115.

The Consent Decree may be examined at the Office of the United States Attorney, District of Rhode Island, 50 Kennedy Plaza, 8th Floor, Providence, Rhode Island 02903, and at the United States Environmental Protection Agency, Region 1 (New England Region), One Congress Street, Boston, Massachusetts 02114. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov)*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547.

In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–17376 Filed 8–31–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on August 18, 2005, a proposed Consent Decree in *United States* v. *Novelis Corporation,* Civil No. 05–1046, was lodged with the United States District Court for the Northern District of New York.

This action concerns the Pollution Abatement Services, Inc. Superfund Site in Oswego, New York and the Fulton Terminals Sites in Fulton, New York (Sites). In this action, the United States asserted claims against Novelis Corporation under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607(a), for recovery of response costs incurred regarding the Sites. The proposed consent decree embodies an agreement with Novelis to pay $572,000 of EPA's past response costs. The decree provides Alcan with a covenant not to sue under Section 107(a) of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Novelis Corporation,* D.J. No. 90–11–2–2/4.

The Consent Decree may be examined at the Office of the United States Attorney for the Northern District of New York, 445 Broadway, Albany, NY 12207, and at the Region II Office of the U.S. Environmental Protection Agency, Region II Records Center, 290 Broadway, 17th Floor, New York, NY 10007–1866. During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–17374 Filed 8–31–05; 8:45 am]

BILLING CODE 4411–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—World Council of Optometry Global Commission on Ophthalmic Standards

Notice is hereby given that, on July 20, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), World Council of Optometry Global Commission on Ophthalmic Standards (''WCO GCOS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: World Council of Optometry Global Commission on Ophthalmic Standards, Elkins Park, PA. The nature and scope of WCO GCOS's standards development activities are: the WCO GCOS provides for voluntary, impartial ophthalmic product evaluation resulting in the issuance of a seal of acceptance for those ophthalmic products that meet published standards specifications developed by the WCO GCOS, including biological, laboratory, and/or clinical evaluations, or the issuance of a seal of certification for those ophthalmic products that meet standards already approved by accepted standards organizations and which are designated for use by the WCO GCOS. The WCO GCOS selects the categories of products to be evaluated and develops evaluation specifications/standards for those ophthalmic products using the American National Standard Institute's Third Party Certification Program Principles (ANSI Z34. 1–1993). Product categories for which the WCO GCOS currently has approved standards are: ultraviolet absorbers and blockers. Additional categories are always under review. The WCO GCOS abides by a strict Code of Conduct for reviewing any applications for seals of acceptance or certification and for developing

approved evaluation specifications/standards.

Dorthy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–17420 Filed 8–31–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,579]

Acme Gear Company, Englewood, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 19, 2005 in response to a worker petition filed by a New Jersey State official on behalf of workers at Acme Gear Company, Englewood, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of August 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4780 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,518]

Boone International, Inc., Corona, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 8, 2005 in response to a petition filed by Company official on behalf of workers at Boone International, Inc., Corona, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 18th day of August, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4779 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,145]

Columbia Lighting, Hubbell Lighting, Inc. Division, Spokane, WA; Notice of Revised Determination on Reconsideration

By letter of July 14, 2005, an International Brotherhood Electrical Workers, Local Union No. 73 requested administrative reconsideration regarding the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on June 20, 2005 was based on the finding that there were no company imports of fluorescent lighting fixtures and no shift of production to a foreign source during the relevant period. The denial notice was published in the **Federal Register** on July 20, 2005 (70 FR 41792).

To support the request for reconsideration, the petitioner supplied additional information regarding the subject firm's foreign facilities which manufacture like or directly competitive products with those produced at the subject firm. Upon further contact with the subject firm's company official, it was revealed that the subject firm significantly increased its import purchases of fluorescent lighting fixtures from January through April of 2005 when compared with the same period in 2004.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Columbia Lighting, Hubbell Lighting, Inc. Division, Spokane, Washington, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Columbia Lighting, Hubbell Lighting, Inc. Division, Spokane, Washington who became totally or partially separated from employment on or after May 9, 2004 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 19th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4775 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,209]

Computer Sciences Corporation, Financial Services Group, East Hartford, CT; Notice of Negative Determination on Remand

On April 14, 2005, the U.S. Court of International Trade (USCIT) issued a second remand order directing the Department of Labor (Labor) to further investigate workers' eligibility to apply for Trade Adjustment Assistance (TAA) in the matter of *Former Employees of Computer Sciences Corporation* v. *United States Secretary of Labor* (Court No. 04–00149).

The Department's initial negative determination for the workers of Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut (hereafter ''CSC'') was issued on October 24, 2003 and published in the **Federal Register** on November 28, 2003 (68 FR 66878). The Department's determination was based on the finding that workers did not produce an article within the meaning of Section 222 of the Trade Act of 1974. It was determined that the subject worker group provided business and information consulting, specialized application software, and technology

outsourcing support to customers in the financial services industry.

By letter of November 24, 2003, the petitioner requested administrative reconsideration of the Department's negative determination. The Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration on January 5, 2004. The determination Notice was published in the **Federal Register** on January 23, 2004 (69 FR 3391).

The Department issued a Notice of Negative Determination on Reconsideration was issued on February 3, 2004 and published in the **Federal Register** on February 24, 2004 (69 FR 8488). On reconsideration, the Department determined that the subject company produced widely marketed software on CD Rom and tapes but the workers were not eligible to apply for TAA because the subject company did not shift production, nor import completed software on physical media that is like or directly competitive with that which was produced at the subject facility.

On March 15, 2004, the petitioner sought judicial review of the negative determination, alleging that packaging functions (storing completed software on physical media and making a tape copy of the completed software on physical media) had shifted to India. On June 2, 2004, the USCIT granted the Department's request for voluntary remand and directed the Department to further investigate the subject workers' eligibility to apply for TAA.

On July 29, 2004, the Department issued a Negative Determination on Reconsideration on Remand for the workers of the subject firm on the basis that packing functions did not shift to India and that all storing and copying functions remained in the United States. The determination also stated that CSC did not import any software which is like or directly competitive with the software produced at the subject facility. The Department's Notice of determination was published in the **Federal Register** on August 10, 2004 (69 FR 48526).

In response to the petitioner's appeal of the negative determination on remand, the USCIT, in its April 14, 2005 order, directed the Department to: (1) Explain why code is not a software component; (2) examine whether the workers were engaged in the production of code; (3) investigate whether there was a shift of code production to India; (4) investigate whether code imported from India is like or directly competitive with the completed software of any component of software formerly produced by the workers; and (5) investigate whether there has been or is likely to be an increase in imports of like or directly competitive article by entities in the United States.

During the second remand investigation, the Department contacted the subject firm to determine what code and software is developed at the subject facility, how code is written and handled, and what services are provide to CSC clients.

The Department considered all information provided by the petitioners as well as solicited comments from the petitioners through their counsel.

In order to meet the criteria for TAA certification, the following criteria must be met:

(1) A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become, or are threatened to become, totally or partially separated; and

(2) The sales or production, or both, of such firm or subdivision have decreased absolutely; and

(3) Imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(4) There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States, is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act or there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Because 19 U.S.C. 2272(a)(2) requires that an article must be produced by the firm employing the workers covered by the petition, the first issue is whether CSC produces an article and whether the workers are engaged in production.

After completing its investigation, DOL still concludes that the plaintiffs should not be certified for TAA benefits. The first requirement that an applicant for TAA benefits must meet in a shift of production case such as this one, is that the production of an *article* was actually shifted. In the present case, what was shifted was the act of code writing. Code, not embodied on a physical medium, is not considered an article for TAA purposes. It is not found on the Harmonized Tariff Schedule (''HTS''). The USCIT has concluded in past cases that an item must be on the HTS to be an ''article'' for the purposes of the Trade Act. *See Former Employees of Murray Engineering* v. *Chao*, 358 F. Supp.2d 1269, 1272 n.7 (''the language of the Act clearly indicates that the HTSUS governs the definition of articles, as it repeatedly refers to ''articles'' as items subject to a duty''). Software code, not on a physical medium, is exempt from the HTSUS, and is, therefore, not an article under the HTSUS test. *See* HTSUS, General Note 3(I) (exempting ''telecommunications transmissions'' from ''goods subject to the provisions of the [HTSUS]''). Therefore, there was no shift of production of an article, and there can be no Trade Act coverage.

Although the preceding discussion resolves this case, DOL undertook the investigation required by the USCIT. First, DOL does not consider software code, not embodied on any physical medium, to be a component of completed software. To be a component, DOL requires that the item in question also be an article in and of itself. It is not enough that the item be indispensable to the function of the completed article. The code is like an idea that will eventually lead to the existence of an ''article''—it is, in fact, necessary—but it is not something that can be measured or ''imported.'' Therefore, software code, like an idea, is not a component of an ''article.''

With respect to the second and third directions of the USCIT, DOL has concluded that the plaintiffs did write software code, and that the code writing function was transferred to India. The software code written in India is similar to the software code plaintiffs wrote in the United States. It is impossible to answer whether it is ''like or directly competitive'' because that assumes the existence of articles to compare. Because software code, not embodied on a physical medium, is not an ''article'' for the purposes of the Trade Act, it is clearly not ''like or directly competitive'' with an actual article such as completed software on a physical medium.

Finally, in order to determine whether the universe of entities who are producing software like or directly competitive with the software produced by the subject company are importing or likely to increase its imports of those products, the Department conducted a survey of the subject company's major competitors. The survey was sent to

those seven companies who produce software which might be considered like or directly competitive with the four CSC software programs at issue: Performance Plus, JETS, Repetitive Payment System, and Vantage-One. Of the companies surveyed, none had imported software in a physical medium, and while some stated that new business opportunities were always possible, none had expressed that they were likely to import any software. Specifically, one competitor stated that it has ''never used offshore resources for *anything*,'' another competitor stated that their software was written ''100% Stateside'' and that there was ''no intention to import anything—no software, no code'' and a third competitor stated ''no way, no how'' that the company imports software. Because all the competitors are domestic, and none of them have increased or are likely to increase imports, it is impossible for consumers of the software code or software on a physical medium to buy an imported product ''like or directly competitive'' to CSC's. Obviously, CSC has increased its ''delivery'' of software code to the United States, but because software code is not an article for the purposes of the Trade Act, such an increase does not qualify to make plaintiffs eligible for TAA benefits.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut.

Signed at Washington, DC, this 24th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4774 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,508]

Deball, Inc., Olney Wallcoverings, Asheville, NC; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 11, 2005, applicable to workers of DeBall, Inc., Asheville, North Carolina. The notice will be published soon in the **Federal Register.**

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of velvet and velour.

New information shows that that all workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Olney Wallcoverings.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of DeBall, Inc., Asheville, North Carolina who was adversely affected by a shift in production to Canada.

The amended notice applicable to TA–W–57,508 is hereby issued as follows:

All workers of DeBall, Inc., Olney Wallcoverings, Asheville, North Carolina, who became totally or partially separated from employment on or after July 6, 2004, through July 11, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4778 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,446]

Herules Incorporation, Aqualon Division, Parlin, NJ; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated August 11, 2005, a representative of the International Union of Operating Engineers, Local 68, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The determination was signed on July 20, 2005, and will soon be published in the **Federal Register.**

The petitioner alleges in the request for reconsideration that workers were separated from the subject company's Power House, which provided steam to the subject company and Green Tea Chemical Technologies (TA–W–53,831, certified January 16, 2004). The petitioner further alleges that the separations were caused by the subject company's reduced need to provide steam to Green Tea Chemical Technologies facility.

The Department carefully reviewed the petitioner's request for reconsideration and has determined that the Department will conduct further investigation based on new information provided by the petitioner.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 19th day of August 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4777 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,671]

Kellogg's Snack Division, Macon, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 4, 2005 in response to a petition filed on behalf of workers at Kellogg's Snack Division, Macon, Georgia.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of August, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4782 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,590]

Union Stamping & Assembly, Inc., d/b/a/ Mayflower Vehicle Systems, South Charleston, WV; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 20, 2005 in response to a petition filed on behalf of workers at Union Stamping & Assembly, d/b/a Mayflower Vehicle Systems, South Charleston, West Virginia.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of August, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4781 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,683]

National Spinning Co., LLC, Alamance Dye Plant, Burlington, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 5, 2005 in response to a petition filed by a company official on behalf of workers at National Spinning Co., LLC, Alamance Dye Plant, Burlington, North Carolina.

The petitioning group of workers is covered by an earlier petition (TA–W–57,619) instituted on July 26, 2005, and filed on behalf of workers of the firm in Whiteville, North Carolina and other locations, including the Alamance Dye Plant in Burlington. That petition is subject of an ongoing investigation for which a determination has not yet been issued.

Further investigation in this case would serve no purpose. Consequently, the investigation under this petition has been terminated.

Signed at Washington, DC, this 18th day of August, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4783 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,214]

Omnova Solutions, Inc., Decorative Products Division, Jeannette, PA; Notice of Revised Determination on Reconsideration

By letter of July 18, 2005 United Steel Workers of America, Local 22 requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA).

The initial investigation resulted in a negative determination signed on June 28, 2005 was based on the finding that there were no company imports of industrial films and laminates and no shift of production to a foreign source during the relevant period. The denial notice was published in the **Federal Register** on July 20, 2005 (70 FR 41792).

To support the request for reconsideration, the petitioner supplied additional information regarding the subject firm's joint venture with a foreign company and requested that the Department of Labor perform additional analysis of the data received upon the initial investigation.

Upon the revision of the data collected during the investigation and further contact with the subject firm's company official and subject firm's customer, it was revealed that the subject firm and a major declining customer increased its import purchases of industrial films and laminates during the relevant time period.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Omnova Solutions, Inc., Decorative Products Division, Jeannette, Pennsylvania, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Omnova Solutions, Inc., Decorative Products Division, Jeannette, Pennsylvania who became totally or partially separated from employment on or after May 6, 2004 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 19th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4776 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0101(2005)]

1,2-Dibromo-3-Chloropropane (DBCP) Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements contained in the 1,2-Dibromo-3-Chloropropane Standard (the ''DBCP'' Standard) (29 CFR 1910.1044).

DATES: Comment must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by October 31, 2005.

Facsimile and electronic transmission: Your comments must be received by October 31, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0101(2005), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov*. Follow instructions on the OSHA Webpage for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (Containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov*. In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

On January 5, 2005, OSHA published the Standards Improvement Project—Phase II, Final rule (70 FR 1112). The final rule removed and revised provisions of standards that were outdated, duplicative, unnecessary, or inconsistent and clarified or simplified regulatory language. The final rule contained several revisions to collections of information contained in the DBCP Standard. These revisions included: updating compliance plans; allowing employers the option to post employee exposure-monitoring results instead of requiring individual notification; and eliminating the need for employers to report emergencies to OSHA and to notify OSHA when establishing a regulated area. Those changes reduced paperwork burden hours while maintaining worker protection and improving consistency among standards.

The information collection requirements specified in the DBCP Standard protect employees from the adverse health effects that may result from their exposure to DBCP. The 1,2-Dibromo-3-Chloropropane standard requires employers to: Monitor employees' exposure to DBCP; monitor employee health; and medical records; and provide employees with information about their exposures and health effects of exposure to DBCP.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper information of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of these collections of information (paperwork) requirements necessitated by the DBCP standard (29 CFR 1910.1044). The Agency will include this summary in its request to OMB to extend the approval of these collections of information requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: 1,2-Dibromo-3-Chloropropane Standard.

OMB Number: 1218–0101.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Average Time Per Response: 0.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submission by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page. Since all submission become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Jonathan L. Snare, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority

for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on August 29, 2005.

Jonathan L. Snare,

Deputy Assistant Secretary of Labor.

[FR Doc. 05–17438 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0072(2005)]

Hazard Communication Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Hazard Communication Standard (29 CFR 1910.1200; 1915.1200; 1917.28; 1918.90; 1926.59; and 1928.21).

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by October 31, 2005.

Facsimile and electronic transmission: Your comments must be received by October 31, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0072(2005), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m. e.t.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov/*. Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov*. In addition, the ICR, comments, and submissions are available for inspection and copying at the OSHA Docket Office at the above address. You also may contact Todd Owen at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information collection requirements in the Hazard Communication Standard (''the Standard'') ensure that the hazards of chemicals produced or imported are evaluated, and that information concerning these hazards is transmitted to downstream employers and their employees. The Standard requires chemical manufacturers and importers to evaluate chemicals they produce or import to determine if they are hazardous; for those chemicals determined to be hazardous, they must develop material safety data sheets and warning labels. Employers are required to establish hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training programs.

Implementation of these collection of information requirements will ensure that employees understand the hazards and identities of the chemicals to which they are exposed, thereby reducing the incidence of chemically-related occupational illnesses and injuries.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information (paperwork) requirements necessitated by the Hazard Communication Standard (29 CFR 1910.1200; 1915.1200; 1917.28; 1918.90; 1926.59; and 1928.21). The Agency is requesting a 3 million hour increase adjustment, mainly as a result of increasing the estimated number of affected nonmanufacturing establishments.

The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the collection of information requirements contained in the Standard.

Type of Review: Extension of currently approved information collection requirements.

Title: Hazard Communication Standard (29 CFR 1910.1200; 1915.1200; 1917.28; 1918.90; 1926.59; and 1928.21).

OMB Number: 1218–0072.

Affected Public: Business or other for-profits; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 3,238,532.

Frequency of Response: On occasion.

Total Responses: 475,375,321.

Average Time per Response: Varies from 12 seconds for establishments to

label an in-plant container to 8 hours for manufacturers or importers to conduct a hazard determination.

Estimated Total Burden Hours: 11,000,793.

Estimated Cost (Operation and Maintenance): $1,047,822.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, significant delays may occur in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web site are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page, and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice, as well as other relevant documents, are available on OSHA's Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Jonathan L. Snare, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on August 29, 2005.

Jonathan L. Snare,

Deputy Assistant Secretary of Labor.

[FR Doc. 05–17439 Filed 8–31–05; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

National Initiatives (Partnerships for the Arts): September 26, 2005 by teleconference. This meeting, from 3 p.m. to 3:30 p.m. e.d.t., will be closed.

AccessAbility (Universal Design): October 3, 2005 by teleconference. This meeting, from 2 p.m. to 4 p.m. e.d.t., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: August 18, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–17394 Filed 8–31–05; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions (FACIE) will be held on September 13, 2005 in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC. This meeting, from 9:30 a.m. to 4:30 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: August 18, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–17395 Filed 8–31–05; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263–LR, ASLBP No. 05–841–02–LR]

Nuclear Management Company, LLC; Notice of Reconstitution

Pursuant to 10 CFR 2.321, the Atomic Safety and Licensing Board in the above captioned *Nuclear Management Company, LLC* proceeding is hereby reconstituted by appointing Administrative Judge William M. Murphy in place of Administrative Judge Anthony J. Baratta.

In accordance with 10 CFR 2.302, henceforth all correspondence, documents, and other material relating to any matter in this proceeding over which this Licensing Board has jurisdiction should be served on Administrative Judge Murphy as follows:

Administrative Judge William M. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland this 25th day of August 2005.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E5–4785 Filed 8–31–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255–LR, ASLBP No. 05–842–03–LR]

In the Matter of Nuclear Management Company, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Nuclear Management Company, LLC (Palisades Nuclear Plant)

This proceeding concerns an August 8, 2005 request for hearing submitted jointly by the Nuclear Information and Resource Service, West Michigan Environmental Action Council, Don't Waste Michigan, the Green Party of Van Buren County, the Michigan Land Trustees, and a number of individuals in response to a June 2, 2005 notice of opportunity for hearing, 70 Fed. Reg. 33,533 (June 8, 2005), regarding a March 22, 2005, application, as supplemented on May 5, 2005, from Nuclear Management Company, LLC, (NMC) for renewal of the operating license for its Palisades Nuclear Plant. In its application, NMC requests that the operating license for its Palisades facility be extended for an additional twenty years beyond the period specified in the current license, which expires on March 24, 2011.

The Board is comprised of the following administrative judges:

Ann Marshall Young, Chair, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Anthony J. Baratta, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Nicholas G. Trikouros, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 25th day of August, 2005.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E5–4784 Filed 8–31–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6622]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Pathfinder Mines Corporation, Shirley Basin Site, Carbon County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Stephen J. Cohen, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7182; fax number: (301) 415–5955; e-mail: *sjc7@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing an amendment to Materials License No. SUA–442, issued to Pathfinder Mines Corporation (the licensee), to authorize alternate concentration limits (ACLs) at its Shirley Basin site in Carbon County, WY. NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed amendment is to authorize ACLs for chloride, radium-226 + -228, selenium, sulfate, thorium-230, total dissolved solids (TDS), and uranium at the licensee's Shirley Basin site. Specifically, the amendment will replace current ground-water protection standards with ACLs because reducing ground-water concentrations to meet current standards is not feasible using the current ground-water corrective action program (CAP). The Licensee will also deactivate the current CAP because approval of the ACLs will bring all ground-water constituents of concern into compliance with approved standards. The current CAP has significantly reduced concentrations of the aforementioned constituents in ground water to the extent that deactivating the CAP is not expected to impact human health, safety, and the environment.

On April 3, 2000, Pathfinder Mines Corporation requested that NRC approve the proposed amendment. The staff has prepared the EA in support of the proposed license amendment. Staff considered impacts to land use, geology and soils, water resources, ecology, meteorology, climatology, air quality, socioeconomics, historical and cultural resources, public and occupational health, and transportation. The staff found that the impacts of the proposed action were not significant because ground-water remedial actions have significantly reduced the areal extent and concentration of hazardous constituents, and considerable modeling and ground-water sampling have adequately demonstrated that residual groundwater constituent concentrations are not expected to impact human health, safety, and the environment.

III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are as follows:

Document	ADAMS Accession No.	Date
Pathfinder Mines Corporation, license amendment request and Shirley Basin Application for Alternate Concentration Limits.	ML003701936	4/3/00

Document	ADAMS Accession No.	Date
Pathfinder Mines Corporation, Shirley Basin Application for Alternate Concentration Limits, Page Revisions for Section 1.3.	ML003721101	6/1/00
U.S. Nuclear Regulatory Commission, Request for Additional Information—Shirley Basin Application for Alternate Concentration Limits.	ML012050189	7/20/01
Pathfinder Mines Corporation, Shirley Basin Application for Alternate Concentration Limits, Response to NRC's Request for Information.	ML012530116 ML012530146	8/29/01
U.S. Fish and Wildlife Service response to NRC, listing the threatened, endangered, and candidate species that may exist in Carbon County, Wyoming.	ML022880471	9/26/02
Pathfinder Mines Corporation, Shirley Basin Application for Alternate Concentration Limits, Revisions to Section 4—Compliance Monitoring.	ML023310580	11/21/02
Wyoming Department of Environmental Quality, Classification of Groundwater, Shirley Basin Facility	ML030070703	1/3/03
Pathfinder Mines Corporation, First Response to September 13, 2003, Request for Additional Information—ACL Application.	ML033250352	11/14/03
Pathfinder Mines Corporation, Response to September 13, 2003, Request for Additional Information—ACL Application.	ML040350749	1/30/04
Wyoming Department of Environmental Quality, Spring Creek Stream Assessment, Draft Work Plan for Biotic Survey, Shirley Basin Site, Wyoming.	ML040920255	3/22/04
Wyoming Department of Environmental Quality, Request for Additional Information, Pathfinder Mines, Alternate Concentration Limits Application, Shirley Basin Site, Wyoming.	ML041410244	3/22/04
U.S. NRC, to Pathfinder Mines Corporation—Request for Additional Information Concerning Alternate Concentration Limits Application for the Shirley Basin, Wyoming Site.	ML043130569	11/1/04
Spring Creek Evaluation for Pathfinder Mines Corporation, Shirley Basin Mine	ML050280249	1/12/05
2004 Spring Creek Aquatic Study, Shirley Basin Mine Area, October 2004	ML050280249	1/12/05
Wyoming Department of Environmental Quality, Response to NRC Request for Additional Information, November 1, 2004.	ML050970395	3/30/05
Wyoming Department of Environmental Quality, Biotic and Physical Survey of the Spring Creek Drainage System in the Vicinity of the Shirley Basin Mine Tailings Site, October 2004.	ML050970382	3/30/05
Environmental Assessment for Amendment to Source Materials License SUA–442 for Ground Water Alternate Concentration Limits.	ML052270503	7/31/05

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD, 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, MD, this 25th day of August 2005.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Chief Uranium Processing Section, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–4786 Filed 8–31–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection:

Applicant Background Survey: New information collection.

This information collection is needed to comply with Federal laws and regulations. 5 U.S.C. Chapter 72 § 7201 establishes an anti-discrimination policy. Title VII of the Civil Rights Act of 1964, § 2000e–8 [§ 709], requires agencies to make and keep relevant records to identify unlawful employment practices. 29 CFR part 1602 allows agencies to collect data to determine if there is any adverse impact on employment practices such as recruitment or selection.

The RRB's Equal Employment Office needs to collect data to assess the impact of the agency's recruitment processes on the hiring of minorities, women and people with disabilities. To obtain the information necessary to conduct a proper assessment, the RRB proposes the use of Form EEO–44, Applicant Background Survey, which will collect information about the racial or ethnic identity, gender and disability of applicants for RRB jobs from outside of the Federal government. Form EEO–44 will only be viewed by RRB Human Resources personnel and Equal Employment Opportunity officials. Summarized data from all external applicants for a position will be used to identify hiring barriers which limit or tends to limit employment opportunities for members of a particular sex, race, or ethnic background, or based on an individual's disability status.

The EEO–44 will contain a ''Plain English'' assurance that the information will be kept highly confidential and only shared with authorized RRB officials. This assurance will specifically state that the information obtained will be kept as a running tally which cannot be disaggregated into individual names, that information from the form is *not* entered into the RRB's personnel database, that the information will not be provided to selecting officials or any others who can affect the selection, or to the public, and that the forms will be destroyed after the position is filled. The information

maintained will not include the applicant's name or other identifier. Completion of one form will be requested of each respondent. Completion is voluntary.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.	Annual responses	Time (min)	Burden (hrs)
EEO–44	800	5	67

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, form, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–17388 Filed 8–31–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–5; SEC File No. 270–259; OMB Control No. 3235–0269.

Rule 17f–7; SEC File No. 270–470; OMB Control No. 3235–0529.

Form N–17D–1; SEC File No. 270–231; OMB Control No. 3235–0229.

Rule 19b–1; SEC File No. 270–312; OMB Control No. 3235–0354.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') requests for extension of the previously approved collections of information discussed below.

Rule 17f–5. Rule 17f–5 under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'' or ''Act'') governs the custody of the assets of registered management investment companies (''funds'') with custodians outside the United States.[1] Under rule 17f–5, the fund's board of directors must find that it is reasonable to rely on each delegate it selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f–5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,[2] and that is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.

The Commission's staff estimates that each year, approximately 207 registrants[3] could be required to make an average of one response per registrant under rule 17f–5, requiring approximately 2 hours of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden associated with these requirements of the rule would be up to approximately 414 hours (207 registrants × 2 hours per registrant). The staff further estimates that during each year, approximately 15 global custodians[4] would be required to make an average of 4 responses per custodian concerning the use of foreign custodians other than depositories. The staff estimates that each response would take approximately 275 hours, requiring approximately 1100 total hours annually per custodian. The total annual burden associated with these requirements of the rule would be approximately 16,500 hours (15 global

[1] 17 CFR 270.17f–5. All references to rules 17f–5, 17f–7, 17d–1, or 19b–1 in this notice are to 17 CFR 270.17f–5, 17 CFR 270.17f–7, 17 CFR 270.17d–1, and 17 CFR 270.19b–1, respectively.

[2] See section 17(f) of the Investment Company Act [15 U.S.C. 80a–17(f)].

[3] This figure is an estimate of the number of new funds each year, based on data reported by funds in 2004 on Form N–1A and Form N–2 [17 CFR 274.101]. In practice, not all funds will use foreign custody managers, and the actual figure may be smaller.

[4] This estimate is the same used in connection with the adoption of the amendments to rule 17f–5 and of rule 17f–7 in 1999, based on staff review of custody contracts and other research. The number of global custodians has not changed significantly since 1999.

custodians × 1100 hours per custodian). Therefore, the total annual burden of all collection of information requirements of rule 17f–5 is estimated to be up to 16,914 hours (414 + 16,500). The total annual cost of burden hours is estimated to be $1,032,000 (414 hours × $500/hour for director time, plus 16,500 hours × $50/hour of professional time). Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

Rule 17f–7. Rule 17f–7 permits funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories.[5] Rule 17f–7 contains some ''collection of information'' requirements. An eligible securities depository has to meet minimum standards for a depository. The fund or its investment adviser generally determines whether the depository complies with those requirements based on information provided by the fund's primary custodian (a bank that acts as global custodian). The depository custody arrangement has to meet certain risk limiting requirements. The fund can obtain indemnification or insurance arrangements that adequately protect the fund against custody risks. The fund or its investment adviser generally determines whether indemnification or insurance provisions are adequate. If the fund does not rely on indemnification or insurance, the fund's contract with its primary custodian is required to state that the custodian will provide to the fund or its investment adviser a custody risk analysis of each depository, monitor risks on a continuous basis, and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians also are required to agree to exercise reasonable care.

The collection of information requirements in rule 17f–7 are intended to provide workable standards that protect funds from the risks of using securities depositories while assigning appropriate responsibilities to the fund's primary custodian and investment adviser based on their capabilities. The requirement that the depository meet specified minimum standards is intended to ensure that the depository is subject to basic safeguards deemed appropriate for all depositories. The requirement that the custody contract state that the fund's primary custodian will provide an analysis of the custody risks of depository arrangements, monitor the risks, and report on material changes is intended to provide essential information about custody risks to the fund's investment adviser as necessary for it to approve the continued use of the depository. The requirement that the primary custodian agree to exercise reasonable care is intended to provide assurances that its services and the information it provides will meet an appropriate standard of care. The alternative requirement that the fund obtain adequate indemnification or insurance against the custody risks of depository arrangements is intended to provide another, potentially less burdensome means to protect assets held in depository arrangements.

The staff estimates that each of approximately 980 investment advisers[6] would make an average of 4 responses annually under the rule to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications. The staff estimates each response would take 5 hours, requiring a total of approximately 20 hours for each adviser. The total annual burden associated with these requirements of the rule would be approximately 19,600 hours (980 advisers × 20 hours per adviser). The staff further estimates that during each year, each of approximately 15 global custodians would make an average of 4 responses to analyze custody risks and provide notice of any material changes to custody risk under the rule. The staff estimates that each response would take 500 hours, requiring approximately 2,000 hours annually per custodian.[7] The total annual burden associated with these requirements of the new rule would be approximately 30,000 hours (15 custodians × 2,000 hours). Therefore, the staff estimates that the total annual burden associated with all collection of information requirements of the rule would be 49,600 hours (19,600 + 30,000). The total annual cost of burden hours is estimated to be $2,480,000 (49,600 hours × $50/hour of professional time). The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

Form N–17D–1. Section 17(d) [15 U.S.C. 80a–17(d)] of the Investment Company Act authorizes the Commission to adopt rules that protect funds and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d–1 under the Act prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Subparagraph (d)(3) of the rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (''investments'') made by a small business investment company (''SBIC'') and an affiliated bank, provided that reports about the investments are made on forms the Commission may prescribe. Rule 17d–2 designates Form N–17D–1 (''form'') as the form for reports required by rule 17d–1(3).

SBIC's and their affiliated banks use form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have the potential for self dealing and other forms of overreaching by affiliated persons at the expense of shareholders.

Form N–17D–1 requires SBICs and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report must include, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of the affiliated person of the SBIC or the affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and

[5] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–23815 (April 29, 1999) [64 FR 24489 (May 6, 1999)].

[6] At the start of 2005, there were more than 36,800 investment company portfolios that were managed or sponsored by more than 980 mutual fund complexes. A fund complex is a group of funds, all of which typically have the same adviser.

[7] These estimates are based on conversations with representatives of the fund industry and global custodians.

the consideration the affiliated person has received or will receive.

Up to five SBICs may file the form in any year.[8] The Commission estimates the burden of filling out the form is approximately one hour per response and would likely be completed by an accountant or other professional. Based on past filings, the Commission estimates that no more than one SBIC is likely to use the form each year. The estimated total annual burden of filling out the form is one hour and the total annual cost is $53.[9] The Commission will not keep responses on Form N–17D–1 confidential.

Rule 19b–1. Rule 19b–1 prohibits funds from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) permits unit investment trusts (''UITs'') engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, if: (i) The capital gains distribution falls within one of several categories specified in the rule, and; (ii) the distribution is accompanied by a report to the unitholder that clearly describes the distribution as a capital gains distribution. The purpose of this notice requirement is to ensure that unitholders understand that the source of the distribution is long-term capital gains.

Rule 19b–1(e) permits a fund to apply for permission to distribute long-term capital gains more than once a year if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution. An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application. The Commission uses the information required by rule 19b–1(e) to facilitate the processing of requests from funds for authorization to make a distribution that would not otherwise be permitted by the rule.

The staff understands that funds that file an application generally use outside counsel to prepare the 19b–1(e) application. The staff estimates that, on average, the fund's investment adviser spends approximately four hours to review an application. The staff estimates that, on average, seven funds file an application per year under this rule for an estimated annual collection of information burden of 28 hours.

There is a cost burden associated with rule 19b–1(e). As noted above, the staff understands that funds that file for exemption under rule 19b–1(e) generally use outside counsel to prepare the exemptive application. The staff estimates that, on average, 10 hours is required to prepare a rule 19b–1(e) exemptive application by outside counsel, including 8 hours by an associate and 2 hours by a partner. The staff estimates that the average cost of outside counsel preparation of the 19b–(e) exemptive application is $3,500. An average of 7 funds file under 19b–1(e) for an exemptive application each year, therefore the staff estimates that the annual cost burden imposed by rule 19b–1(e) is $24,500.

The Commission staff estimates that there is no hour burden associated with paragraph (c) of rule 19b–1. There is also a cost burden associated with rule 19b–1(c). The staff estimates that there are approximately 6,485 UITs. For purposes of this Paperwork Reduction Act analysis, the staff has assumed that each of these UITs could rely on rule 19b–1(c) to make capital gains distributions. The staff estimates that, on average, UITs rely on rule 19b–1(c) once a year to make a capital gains distribution.[10] The staff estimates that a UIT incurs a cost of $50, which is encompassed within the fee the UIT pays its trustee, to prepare a notice for a capital gains distribution under rule 19b–1(c). These notices require limited preparation, the cost of which accounts for only a small, indiscrete portion of the comprehensive fee charged by the trustee for its services to the UIT. There is no separate cost to mail the notices because they are mailed with the capital gains distribution. Thus, the staff estimates that the notice requirement imposes an annual cost on UITs of approximately $324,250.

Based on these calculations, the total number of respondents for rule 19b–1 is estimated to be 6,492 (6485 UIT portfolios + 7 funds filing an application under rule 19b–1(e)), the total annual hour burden is estimated to be 28 hours, and the total annual cost burden is estimated to be $348,750. These estimates of average annual burden hours and costs are made solely for purposes of the Paperwork Reduction Act. The collections of information required by 19b–1(c) and 19b–1(e) are necessary to obtain the benefits described above. Responses will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information relating to rules 17f–5, 17f–7, or 19b–1, or Form N–17D–1 should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 24, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4773 Filed 8–31–05; 8:45 am]

BILLING CODE 8010–01–P

[8] As of April 22, 2005, five SBICs were registered with the Commission.

[9] Commission staff estimates that the annual burden would be incurred by accounting professionals with an average hourly wage rate of $53.08 per hour. See Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry—2003* (2003) (reporting median salary paid to senior accountants outside New York).

[10] The number of times a UITs may rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly from one year to another. A number of UITs are organized as grantor trusts, and therefore do not generally make capital gains distributions under rule 19b–1(c), or may not rely on rule 19b–1(c) as they do not meet the rule's requirements. Other UITs may distribute capital gains biannually, annually, quarterly, or at other intervals.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27050]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 26, 2005.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August 2005. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30

p.m. on September 20, 2005, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–0504.

Columbia Growth Fund, Inc. [File No. 811–1449]

Columbia Common Stock Fund, Inc. [File No. 811–6341]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On March 18, 2005, each applicant transferred its assets to a corresponding series of Columbia Funds Trust XI, based on net asset value. Expenses of approximately $262,500 and $166,500, respectively, incurred in connection with the reorganization were paid by each acquiring fund and Columbia Management Group, Inc., the parent company of applicants' investment adviser.

Filing Dates: The applications were filed on May 27, 2005, and amended on August 18, 2005.

Applicants' Address: One Financial Center, Boston, MA 02110.

Alyeska Fund, L.L.C. [File No. 811–10397]

Sawgrass Fund, L.L.C. [File No. 811–9727]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 16, 2004 and March 10, 2005, respectively, each applicant made a liquidating distribution to its shareholders, based on net asset value. Applicants incurred expenses of $22,428 and $176,608, respectively, in connection with the liquidations.

Filing Dates: The applications were filed on June 24, 2005, and amended on August 5, 2005 and August 8, 2005, respectively.

Applicants' Address: c/o Oppenheimer & Co., Inc., 200 Park Ave., 24th Floor, New York, NY 10116.

The Vantage Funds [File No. 811–21678]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant is not making a public offering of its securities and does not propose to make a public offering. Applicant currently has 1 beneficial owner and will continue to operate as a private investment company in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on June 13, 2005, and amended on August 2, 2005.

Applicant's Address: Newberry Business Center, 600 Main St., Suite 100, Stroudsburg, PA 18360.

Scudder Asset Management Portfolio [File No. 811–6699]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 8, 2004, applicant's sole feeder fund, Lifecycle Long Range Fund, a series of Scudder Advisor Funds III, withdrew its assets from applicant in a redemption-in-kind, thus converting the Lifecycle Long Range Fund into a stand-alone fund. As a result of the redemption, applicant has no remaining assets or shareholders. Expenses of $2,000 incurred in connection with the liquidation were paid by Lifecycle Long Range Fund.

Filing Dates: The application was filed on March 31, 2005, and amended on August 9, 2005.

Applicant's Address: 1 South St., Baltimore, MD 21202.

CIGNA Funds Group [File No. 811–1646]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Between September 30, 2004 and March 30, 2005, eight of applicant's series made a liquidating distribution to their shareholders, based on net asset value. On April 8, 2005 applicant's remaining Small Cap Growth/TimesSquare Fund series transferred its assets to a corresponding series of Managers AMG Funds. Expenses of $276,161 incurred in connection with the liquidation and reorganization were paid by CIGNA Investment Advisors, Inc., applicant's investment adviser, TimesSquare Acquisition, LLC, and Prudential Retirement Brokerage Services, Inc., applicant's underwriter.

Filing Dates: The application was filed on June 15, 2005, and amended on August 4, 2005.

Applicant's Address: c/o CIGNA Investment Advisors, Inc., 280 Trumbull St., Hartford, CT 06103.

CIGNA Institutional Funds Group [File No. 811–7236]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 30, 1999, applicant made a liquidating distribution to affiliates of the sponsor who provided seed money for applicant. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on June 20, 2005, and amended on August 3, 2005.

Applicant's Address: c/o CIGNA Investment Advisors, Inc., 280 Trumbull St., Hartford, CT 06103.

BDI Investment Corporation [File No. 811–3868]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 20, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $17,663 incurred in connection with the liquidation were paid by applicant. Any unclaimed funds will be held by Registrar and Transfer Company for six months, after which they will escheat to the state.

Filing Dates: The application was filed on May 3, 2005, and amended on August 3, 2005.

Applicant's Address: 990 Highland Dr., Suite 100, Solana Beach, CA 92075.

SouthTrust Funds [File No. 811–6580]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 21, 2005, applicant's six series transferred their assets to corresponding series of Evergreen Select Equity Trust, Evergreen Select Fixed Income Trust, Evergreen Money Market Trust, Evergreen Municipal Trust and Evergreen Equity Trust, based on net asset value. Expenses of $501,785 incurred in connection with the reorganization were paid by Wachovia Corporation, the parent of applicant's investment advisor.

Filing Dates: The application was filed on April 29, 2005, and amended on August 3, 2005.

Applicant's Address: Federated Investors Tower, 5800 Corporate Dr., Pittsburgh, PA 15237–7010.

Redwood Microcap Fund, Inc. [File No. 811–3986]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has 1 shareholder and presently is not making a public offering and does not propose

to make a public offering of its securities. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on October 1, 1993, and amended on February 1, 1994, July 28, 1995, January 2, 2002, July 12, 2005 and August 3, 2005.

Applicant's Address: 6180 Lehman Dr. #103, Colorado Springs, CO 80918.

Wynstone Fund, L.L.C. [File No. 811–8959]

Stratigos Fund, L.L.C. [File No. 811–9939]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 28, 2005, each applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $138,497 and $129,696, respectively, incurred in connection with the liquidations were paid by each applicant.

Filing Dates: The applications were filed on July 29, 2005, and amended on August 5, 2005.

Applicant's Address: c/o Oppenheimer & Co., Inc., 200 Park Ave., 24th Floor, New York, NY 10116.

Washington Investors Plans Inc. [File No. 811–828]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. Between November 1, 2004 and April 29, 2005, applicant made final liquidating distributions to its plan holders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on July 20, 2005.

Applicant's Address: 1101 Vermont Ave., NW., Suite 600, Washington, DC 20005.

ASA Debt Arbitrage Fund LLC [File No. 811–21389]

ASA Managed Futures Fund LLC [File No. 811–21390]

ASA Market Neutral Equity Fund LLC [File No. 811–21391]

ASA Hedged Equity Fund LLC [File No. 811–21392]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 30, 2005, each applicant made a final liquidating distribution to its shareholders, based on net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on August 9, 2005.

Applicants' Address: 817 West Peachtree St., NW., Suite 400, Atlanta, GA 30308–1144.

AIM International Funds, Inc. II (Formerly INVESCO International Funds, Inc.) [File No. 811–7758]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 24, 2003 and October 31, 2003, applicant transferred its assets to corresponding series of AIM International Mutual Funds and AIM International Funds, Inc., based on net asset value. Expenses of $141,283 incurred in connection with the reorganization were paid by INVESCO Funds Group, Inc., applicant's investment adviser.

Filing Dates: The application was filed on April 26, 2005, and amended on August 9, 2005.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

AIM Manager Series Funds, Inc. (Formerly INVESCO Manager Series Funds, Inc.) [File No. 811–21103]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 2003, applicant transferred its assets to AIM Counselor Series Trust, based on net asset value. Expenses of $69,538 incurred in connection with the reorganization were paid by applicant and INVESCO Funds Group, Inc., applicant's investment adviser.

Filing Dates: The application was filed on April 25, 2005, and amended on August 9, 2005.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

Short-Term Investments Co. [File No. 811–7892]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 4, 2003, applicant transferred its assets to Short-Term Investments Trust, based on net asset value. Expenses of $128,880 incurred in connection with the reorganization were paid by AIM Advisors, Inc., applicant's investment adviser.

Filing Dates: The application was filed on April 25, 2005, and amended on August 9, 2005.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

AIM Series Trust [File No. 811–7787]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 4, 2003, applicant transferred its assets to AIM Growth Series, based on net asset value. Expenses of $33,416 incurred in connection with the reorganization were paid by AIM Advisors, Inc., applicant's investment adviser.

Filing Dates: The application was filed on April 25, 2005, and amended on August 9, 2005.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

AIM Money Market Funds, Inc. (Formerly INVESCO Money Market Funds, Inc.) [File No. 811–2606]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 3, 2003 and November 4, 2003, applicant transferred its assets to corresponding series of AIM Treasurer's Series Trust, AIM Investment Securities Funds and AIM Tax-Exempt Funds, based on net asset value. Expenses of $264,024 incurred in connection with the reorganization were paid by INVESCO Funds Group, Inc., applicant's investment adviser.

Filing Dates: The application was filed on April 25, 2005, and amended on August 9, 2005.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

AIM Advisor Funds [File No. 811–3886]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 27, 2003 and October 29, 2003, applicant transferred its assets to AIM Investment Securities Funds and INVESCO International Funds, Inc., based on net asset value. Expenses of $69,489 incurred in connection with the reorganization were paid by applicant and AIM Advisors, Inc., applicant's investment adviser.

Filing Date: The application was filed on April 25, 2005, and amended on August 9, 2005.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

AIM Bond Funds, Inc. [File No. 811–2674]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 27, 2003 and November 3, 2003, applicant transferred its assets to AIM Investment Securities Funds, based on net asset value. Expenses of $338,074 incurred in

connection with the reorganization were paid by applicant and AIM Advisors, Inc., applicant's investment adviser.

Filing Dates: The application was filed on April 25, 2005, and amended on August 9, 2005.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

AllianceBernstein Global Small Cap Fund, Inc. [File No. 811–1415]

AllianceBernstein Select Investor Series, Inc. [File No. 811–9176]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By March 1, 2005, each applicant had made a liquidating distribution to its shareholders, based on net asset value. Expenses of $26,140 and $57,543, respectively, incurred in connection with the liquidations were paid by Alliance Capital Management L.P., applicants' investment adviser.

Filing Date: The applications were filed on August 4, 2005.

Applicants' Address: 1345 Avenue of the Americas, New York, NY 10105.

Lincoln New York Separate Account T for Variable Annuities [File No. 811–21041]

Summary: Applicant, a separate account for variable annuities, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities, does not propose to make a public offering, and has never had any contractowners invested in the separate account.

Filing Dates: The application was filed on May 11, 2005, and amended on July 27, 2005.

Applicant's Address: 100 Madison Street, Suite 1860, Syracuse, New York 13202.

Cigna Variable Products Group [File No. 811–5480]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant's board of directors approved the merger of Applicant's Core Plus Bond series into the PIMCO Total Return Portfolio and Applicant's Money Market series into the PIMCO Money Market Portfolio on December 20, 2004 and Applicant's S&P 500 Index series into the Dreyfus Stock Index Fund, Inc. on February 24, 2005. Shareholders of the Money Market and Core Plus Bond series approved the mergers on April 21, 2005. Shareholders of the S&P Index series approved the merger on April 27, 2005. The mergers took place on April 22, 2005 for the Money Market and Core Plus Bond series and on April 29, 2005 for the S&P 500 series. All of the expenses of the mergers were paid by CIGNA Investment Advisors, Inc., The Dreyfus Corporation (relative to the S&P 500 Index series) and Pacific Investment Management LLC (relative to the Money Market and Core Plus Bond series). Applicant has no remaining assets and no outstanding debts or liabilities.

Filing Dates: The application was filed on June 15, 2005, and amended on July 27, 2005.

Applicant's Address: c/o CIGNA Investment Advisors, Inc., 280 Trumbull Street, Hartford, CT 06103.

GALIC of New York Separate Account I. [File No. 811–9341]

Summary: Applicant, a separate account of Great American Life Insurance Company of New York, seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities and is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on July 21, 2005.

Applicant's Address: 14th Floor, 125 Park Avenue, New York, NY 10017.

JNL Variable Fund III LLC [File No. 811–9369]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 9, 2005 and in reliance on Rule 17a–8 under the Act, applicant's Board of Managers approved merging applicant into the JNL/Mellon Capital Management JNL 5 Fund, a portfolio of the JNL Variable Fund LLC. On April 29, 2005, applicant distributed all of its assets to its shareholders based on net asset value. Aggregate expenses of approximately $8,733 incurred in connection with the merger were paid by applicant's adviser, Jackson National Asset Management, LLC.

Filing Date: The application was filed on May 24, 2005.

Applicant's Address: 1 Corporate Way, Lansing, Michigan 48951.

JNL Variable Fund V LLC [File No. 811–9367]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 9, 2005 and in reliance on Rule 17a–8 under the Act, applicant's Board of Managers approved merging applicant into the JNL/Mellon Capital Management JNL 5 Fund, a portfolio of the JNL Variable Fund LLC. On April 29, 2005, applicant distributed all of its assets to its shareholders based on net asset value. Aggregate expenses of approximately $8,733 incurred in connection with the merger were paid by applicant's adviser, Jackson National Asset Management, LLC.

Filing Date: The application was filed on May 24, 2005.

Applicant's Address: 1 Corporate Way, Lansing, Michigan 48951.

JNLNY Variable Fund II LLC [File No. 811–9947]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. Applicant did not commence operations and is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on May 24, 2005.

Applicant's Address: 1 Corporate Way, Lansing, Michigan 48951.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4789 Filed 8–31–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27049; 812–13140]

Harris Insight Funds Trust, et al., Notice of Application

August 25, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: The applicants request an order that would permit certain registered management investment companies to invest uninvested cash and cash collateral in affiliated money market funds.

Applicants: Harris Insight Funds Trust (the ''Trust'') and Harris Investment Management, Inc. (the ''Adviser'').

Filing Dates: The application was filed on December 3, 2004, and

amended on June 27, 2005, and August 16, 2005.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 19, 2005, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities & Exchange Commission, 100 F Street NE., Washington, DC 20549–9303; Applicants, c/o Timothy R. Kain, Vice President and Counsel, Harris Trust and Savings Bank, 111 W. Monroe Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company and consists of multiple series (each, a ''Fund''). The Adviser, a Delaware corporation, is an investment adviser registered under the Investment Advisers Act of 1940 and serves as investment adviser to each of the Funds.[1]

2. Certain Funds, including money market Funds that comply with rule 2a–7 under the Act (each, an ''Investing Fund''), have, or may be expected to have, cash that has not been invested in portfolio securities (''Uninvested Cash''). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments or money from investors. Certain Investing Funds also may participate in a securities lending program (''Securities Lending Program'') under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are secured by collateral, including cash collateral (''Cash Collateral'' and together with Uninvested Cash, ''Cash Balances''), equal at all times to at least the market value of the securities loaned. The Securities Lending Program, including the investment of any Cash Collateral, will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

3. Applicants request an order to permit: (a) The Investing Funds to use their Cash Balances to purchase shares of one or more of the Funds that are in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Investing Fund and comply with rule 2a-7 under the Act (''Money Market Funds''); (b) the Money Market Funds to sell their shares to and redeem such shares from the Investing Funds; and (c) the Adviser to effect the above transactions.

4. The investment by each Investing Fund in shares of the Money Market Funds will be in accordance with that Investing Fund's investment policies and restrictions as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns and diversify holdings.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no investment company may acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company, its principal underwriter, or any broker or dealer, may sell securities of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Investing Funds to use their Cash Balances to acquire shares of a Money Market Fund in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases an Investing Fund's aggregate investment of Uninvested Cash in shares of the Money Market Funds will not exceed 25% of the Investing Fund's total assets. Applicants also request relief to permit the Money Market Funds, their principal underwriter and any broker or dealer to sell securities of the Money Market Funds to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund will not be in a position to gain undue influence over a Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee adopted in accordance with rule 12b-1 under the Act or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules) or, if such shares are subject to any such fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Money Market Fund offers more than one class of shares, an Investing Fund will invest its Cash Balances only in the class with the lowest expense ratio (taking into account the expected impact of the Investing Fund's

[1] Applicants request that any relief granted also apply to any existing or future registered open-end management investment company or series thereof that is currently or in the future advised by the Adviser, or any person controlling, controlled by, or under common control with the Adviser (included in the term ''Funds''). All registered investment companies that currently intend to rely on the requested order are named as applicants. Any existing or future registered investment company or series thereof that relies on the requested order in the future will do so only in accordance with the terms and conditions of the application.

investment) at the time of the investment. In connection with approving any advisory contract, the board of trustees of an Investing Fund (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. Applicants represent that no Money Market Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Applicants state that the Investing Funds and the Money Market Funds may be deemed to be under common control and affiliated persons of each other because each Fund is advised by the Adviser. In addition, if an Investing Fund acquires more than 5% of the voting securities of a Money Market Fund, the Investing Fund may be an affiliated person of the Money Market Fund. As a result, section 17(a) would prohibit the sale of the shares of the Money Market Funds to the Investing Funds, and the redemption of the shares by the Investing Funds.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person, security or transaction, or any class or classes or persons, securities or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants submit that their request for relief satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants state that the Investing Funds will purchase and sell shares on the same terms and on the same basis as shares are purchased and sold by all other shareholders of the Money Market Funds. In addition, under the proposed transactions, the Investing Funds will retain their ability to invest their Cash Balances directly in money market instruments as permitted by each Investing Fund's investment objectives and policies. Applicants state that each Money Market Fund reserves the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's Board determines that such sales would adversely affect its portfolio management and operations.

C. Section 17(d) of the Act and Rule 17d–1 Under the Act

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has issued an order authorizing the arrangement. Applicants state that the Investing Funds (by purchasing shares of the Money Market Funds), the Money Market Funds (by selling shares to and redeeming them from the Investing Funds), and the Adviser (by managing the assets of the Investing Funds invested in the Money Market Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 thereunder.

2. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the registered investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet these standards because the investments by the Investing Funds in shares of the Money Market Funds would be indistinguishable from any other shareholder account maintained by the Money Market Funds and the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the Rules of Conduct of the NASD), or if such shares are subject to any such fee, the Adviser will waive its advisory fee for the Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Before the next meeting of the Board of an Investing Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for the Investing Fund, the Board of the Investing Fund, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fee charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the advisory contact, including the considerations relating to fees referred to above.

3. The Investing Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that each Investing Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25% of the Investing Fund's total assets.

4. Investment of an Investing Fund's Cash Balances in shares of the Money Market Funds will be in accordance

with the Investing Fund's investment restrictions and will be consistent with the Investing Fund's investment objectives and policies as set forth in its prospectus and statement of additional information.

5. So long as its shares are held by an Investing Fund, a Money Market Fund will not acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Each Investing Fund and each Money Market Fund that may rely on the order shall be advised by an Adviser. Each Investing Fund and Money Market Fund will be in the same group of investment companies as defined in section 12(d)(1)(G) of the Act.

7. Before the Investing Funds may participate in a Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees, will have approved the Investing Fund's participation in the Securities Lending Program. The Board also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interests of the Investing Fund.

8. The Board of each Investing Fund will satisfy the fund governance standards as defined in rule 0–1(a)(7) under the Act by the compliance date for the rule.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4788 Filed 8–31–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52334; File No. SR–Amex–2005–068]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to Amex Rules 26 and 27

August 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Amex. On June 30, 2005, Amex filed Amendment No. 1 to the proposed rule change.[3] On August 19, 2005, Amex filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rules 26 and 27 for the purpose of: (i) Combining the Equities, Options and Special Allocations Committees; (ii) changing the composition of the new Allocations Committee; and (iii) providing the Performance Committee with the authority to reallocate securities in connection with specialist transfers.

The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the principal office of the Amex, and at the Commission's Public Reference Room. The text of the proposed rule change also appears below. Proposed new language is *italicized*; proposed deletions are in [brackets].

Rule 26. Performance Committee

(a) No Change.

(b) The Performance Committee shall review, and approve, disapprove or conditionally approve, mergers and acquisitions of specialist units, transfers of one or more specialist registrations, specialist joint accounts, and changes in control or composition of specialist units. The Performance Committee shall approve a proposed transaction involving a specialist unit unless it determines that a countervailing institutional interest indicates that the transaction should be disapproved or conditionally approved. In determining whether there is a countervailing institutional interest, the Performance Committee shall consider the maintenance or enhancement of the quality of the Exchange's market, taking into account the criteria that the Allocations Committee may consider in making an initial allocation determination (Rule 27(b)) and other considerations as may be relevant in the particular circumstances. *The Performance Committee shall be convened to reallocate securities when there is a business transaction that results in the transfer of one or more specialist registrations. The Performance Committee shall allocate the securities in accordance with the agreement of the parties unless the Committee determines that a countervailing institutional interest indicates that there should be some other allocation.*

The Performance Committee shall evaluate specialists, individually and/or collectively as units, to determine whether they have fulfilled performance standards relating to, among other things: (1) Quality of markets, (2) competition with other markets, (3) observance of ethical standards, and (4) administrative factors. The Performance Committee may consider any relevant information, including but not limited to the results of the Specialist Floor Broker Questionnaire, trading data, a member's regulatory history, order flow statistics, and such other factors and data as may be pertinent in the circumstances. The Performance Committee also may review specialists, individually and/or collectively as units, with respect to capital requirements and the ''early warning level'' set forth in Commentary .06 to Rule 171. The Performance Committee may take one or more of the following actions if it finds that a specialist or unit has failed to properly perform as a specialist: (1) Send admonitory letters, (2) refer matters to the Exchange's Enforcement Department for investigation and possible disciplinary proceedings, (3) counsel specialists on how to improve their performance, (4) require specialists to adopt a performance improvement plan, (5) reorganize specialist units, (6) require the reallocation of securities, (7) suspend a specialist's or unit's registration as a specialist for a specific period of time, or (8) prohibit a specialist or unit from receiving allocations in a particular situation or for a specified period of time. In appropriate circumstances, the Performance Committee may confine a prohibition on new allocations to one of the three classes of securities traded on the Exchange (*i.e.*, equities, Exchange Traded Funds or options), or otherwise target a remedial action to a particular

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made a non-substantive correction to the proposed rule text of Amex Rule 26 and made a correction to the proposed rule text of Amex Rule 27 to reflect that, in the case of an equity security, the list of qualified specialists shall consist of five specialists.

[4] In Amendment No. 2, the Exchange made corrections to the proposed rule text of Amex Rule 27 to clarify that: (1) The Allocations Committee may consist of, among others, four brokers for equities and all other securities admitted for trading on the Exchange except Exchange Traded Funds and options; and (2) the Allocations Committee may be chaired by the Chief Executive Officer's designee.

class of security traded by a specialist or unit.

(c) through (h)—No Change.

Commentary

.01 through .08—No Change.

Rule 27. Allocations Committee

(a)[(i)] The [Options] Allocations Committee allocates *equity securities of operating companies*, equity options admitted to dealings on the Exchange *and all other securities to be admitted for trading on the Exchange*. [It consists of 11 persons drawn from a roster of approximately 75 persons and is comprised as follows: Eight Floor members (six Floor brokers and two Registered Options Traders) and three representatives of upstairs member firms. The Options Allocations Committee is chaired by a Floor Governor who does not vote except to make or break a tie. In the event that no Floor Governor is able to chair the Committee, a Senior Floor Official may chair the Committee. The minimum quorum for the transaction of business by the Options Allocations Committee shall be six persons including at least one representative of an upstairs member firm. Upstairs member firm representatives may attend meetings by telephone.] *It consists of six persons drawn from a roster of approximately 75 persons and is comprised as follows: the Chief Executive Officer (or his or her designee), a representative of an upstairs member firm and either (i) four (4) brokers for equities and other securities admitted to trading on the Exchange except for Exchange Traded Funds and options; (ii) two (2) brokers and two (2) Registered Traders for Exchange Traded Funds; or (iii) two (2) brokers and two (2) Registered Options Traders for options. The Allocations Committee is chaired by the Chief Executive Officer (or his or her designee) who does not vote except to make or break a tie. In the absence of the Chief Executive Officer (or his or her designee), a Floor Governor or a Senior Floor Official may chair the Committee. The minimum quorum for the transaction of business by the Allocations Committee shall be four persons. The upstairs member firm representative may attend meetings by telephone.*

[(ii) The Equities Allocations Committee allocates the equity securities of operating companies admitted to dealings on the Exchange. It consists of ten persons drawn from a roster of approximately 70 persons and is comprised as follows: six Floor brokers, one specialist, and three representatives of upstairs member firms. The Equities Allocations Committee is chaired by a Floor Governor who does not vote except to make or break a tie. In the event that no Floor Governor is able to chair the Committee, a Senior Floor Official may chair the Committee. The minimum quorum for the transaction of business by the Equities Allocations Committee shall be six persons. Upstairs member firm representatives may attend meetings by telephone.

(iii) The Special Allocations Committee allocates securities that are not allocated by the Options or Equities Allocations Committees and securities with special characteristics as may be determined by the Chief Executive Officer or his or her designee. It consists of six persons drawn from a roster of approximately 30 persons and is comprised as follows: the Chief Executive Officer (or his or her designee), two brokers, two Registered Options Traders, and a representative of an upstairs member firm. The Special Allocations Committee is chaired by the Chief Executive Officer who does not vote except to make or break a tie. In the Chief Executive Officer's absence, a Floor Governor or a Senior Floor Official may chair the Committee. The minimum quorum for the transaction of business by the Special Allocations Committee shall be four persons. The upstairs member firm representative may attend meetings by telephone.

The Options, Special, and Equities Allocations Committees are hereinafter referred to as the Allocations Committee.]

(b) No Change.

(c) No Change.

(d) At regular intervals, the [Options] Allocations Committee shall prepare a list (the ''pre-allocation list'') of the most qualified option specialists on the Exchange based upon criteria enumerated in paragraph (b) of this Rule and interviews of all interested specialists conducted by the persons on the roster of the [Options] Allocations Committee. In the event that the Exchange determines to list an option following its designation by another exchange, that option shall be allocated to the next specialist on the pre-allocation list unless, in the opinion of a majority of available Floor Governors, a material performance situation or another relevant matter has developed with respect to that specialist since the preparation of the pre-allocation list in which case the specialist shall be bypassed and the [Options] Allocations Committee shall be convened as soon as possible to determine if the specialist should be removed from the pre-allocation list.

(e) If the issuer of a listed equity security chooses to participate in the allocation process, the Allocations Committee shall prepare a list of qualified specialists based on the criteria set forth in paragraph (b). In the case of an equity security, the list shall consist of five specialists. In the case of an Exchange Traded Fund or Structured Product, the list shall consist of five specialists. The issuer may request that one or more specialists be placed on the list of eligible specialists. The Allocations Committee, however, is not obligated to honor such requests. Specialists that are subject to a preclusion on new allocations as a result of a disciplinary proceeding or action by the Performance Committee only are eligible for allocations of ''related securities'' as described in Commentary .05 of this Rule. The issuer may ask to meet with representatives of the specialists units on the list.

The issuer shall select its specialist from the list within five business days of receiving the list by providing the Exchange with a letter signed by person of Secretary rank or higher indicating the issuer's choice of specialist. In the case of an Exchange Traded Fund or Structured Product, the selection may be made by a senior officer of the sponsor or issuer who has been authorized to make such selection. If the issuer does not make its selection in a timely manner, the Allocations Committee may select the specialist as provided in paragraph (b) of this Rule.

The security shall remain with its initial specialist for at least 120 days. After that time, but during the first 12 months after listing, the issuer or sponsor may request that the security be reallocated should it become dissatisfied with its specialist. This is the case whether or not the issuer or sponsor has participated in the selection process. The issuer or sponsor is expected to furnish an explanation for the basis for its dissatisfaction, and if after counseling the issuer or sponsor and the specialist such change is still desired, the Exchange shall reallocate the security within 30 days. In any such reallocation, the Exchange shall follow the allocation procedures described in this paragraph (e) unless the issuer or sponsor requests the Allocations Committee to select the specialist without any issuer or sponsor input under the procedures described in paragraph (b) of this Rule.

(f) The Allocations Committee shall be convened to reallocate securities when (1) the Committee on Floor Member Performance directs reallocation, (2) a specialist requests to be relieved of a particular security for

good cause, or (3) a specialist's registration in a security is canceled due to disciplinary action. Whenever the Allocations Committee reallocates a security for the reasons stated in (1) through (3) of this paragraph, the Allocations Committee shall follow the procedures described in paragraph (b) of this Rule. The Allocations Committee also shall be convened to reallocate securities when (4) [there is a business transaction that results in the transfer of one or more specialist registrations, (5)] a specialist dissolves or recombines, [(6)] (5) a specialist has been determined to be in such financial or operating condition that it cannot be permitted to continue to specialize in one or more of its specialty securities with safety to investors, its creditors or other members, or [(7)] (*6*) a specialist has become subject to the pre-borrowing requirement of Rule 203(b)(3) of Regulation SHO under the Securities Exchange Act of 1934 with respect to one of its specialty securities or, in the case of an options specialist, with respect to the underlying security. The Allocations Committee shall follow the procedures described in paragraphs (g) or (h) of this Rule, as appropriate, whenever it reallocates securities for the reasons stated in (4) through [(7)] (*6*) of this paragraph.

(g) In the event that the participants in a specialist unit have previously entered into a written agreement as to how the ''book'' will be divided in the event of a dissolution or recombination, [or there is a transfer of specialist registrations as a result of a business transaction,] the Allocations Committee shall allocate the securities in accordance with the agreement of the parties, unless the Performance Committee determines that a countervailing institutional interest indicates that there should be some other allocation, in which case the Allocation*s* Committee shall reallocate the securities according to instructions received from the Performance Committee or, if there are no instructions, as provided in paragraph (b) of this Rule. In the event that a specialist unit dissolves and the participants in the unit are unable to enter into a written agreement as to how the ''book'' will be divided, reallocation shall be deferred until the dispute is resolved through arbitration unless the Performance Committee determines that a countervailing institutional interest suggests that the securities should be reallocated prior to the conclusion of the arbitration in which case the Allocation*s* Committee shall reallocate the securities according to instructions received from the Performance Committee or, if there are no instructions, as provided in paragraph (b) of this Rule. The Allocations Committee shall reallocate the securities in accordance with the decision of the arbitration panel unless the Performance Committee determines that a countervailing institutional interest indicates that there should be some other allocation, in which case the Allocations Committee shall reallocate the securities as provided in paragraph (b) of this Rule.

(h) through (i)—No Change.

Commentary

.01 through .05—No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to combine the existing Equity, Options and Special Allocations Committees into a single ''Allocations Committee.'' In addition, the Exchange proposes to change the composition of the Allocations Committee and to permit the Performance Committee to reallocate securities in connection with specialist transfers without approval from the Allocations Committee.

Article II, Section 3 of the Amex Constitution provides the Board of Governors (''Board'') with the authority to allocate and reallocate the equity securities of operating companies (''equities''), options and other securities listed on the Exchange. The Board in connection with the allocation and reallocation of equities and options classes has delegated this authority to the Equities Allocations Committee and the Options Allocations Committee, respectively.[5] The Board, in connection with securities that are not allocated by the Equities Allocations Committee or Options Allocations Committee and securities with special characteristics, has delegated authority to the Special Allocations Committee.[6] In addition, the Performance Committee has limited input in connection with the reallocation of securities resulting from a transfer of specialist units.

The Exchange states that combining the Equities, Options and Special Allocations Committees into a single ''Allocations Committee'' and changing the composition of the Allocations Committee would streamline and provide greater efficiency to the process for allocating and reallocating equities and options classes.

Current Amex Rule 27 provides that the Equities Allocations Committee consists of six (6) floor brokers, one (1) specialist and three (3) representatives of upstairs member firms. The Committee is chaired by a Floor Governor who does not vote except to make or break a tie. The minimum quorum requirement is six persons. The Options Allocations Committee consists of eight (8) floor members, which include six (6) floor brokers and two (2) Registered Options Traders, and three (3) representatives of upstairs member firms. The Committee is chaired by a Floor Governor who does not vote except to make or break a tie. The minimum quorum requirement is six persons, including at least one representative of an upstairs member firm. The Special Allocations Committee consists of the Chief Executive Officer (or his or her designee), two (2) brokers, two (2) Registered Options Traders and a representative of an upstairs member firm. The Commission notes that the minimum quorum requirement is four persons. The Special Allocations Committee is chaired by the Chief Executive Officer who does not vote except to make or break a tie.

The proposed rule change would establish a single Allocations Committee for equities, options and other listed securities. Similar to the current Special Allocations Committee, the Allocations Committee would consist of the Chief Executive Officer (or his or her designee), a representative of an upstairs member firm and either: (i) Four (4) brokers for equities and other securities admitted to trading on the Exchange except for Exchange Traded Funds and options; (ii) two (2) brokers and two (2) Registered Traders for Exchange Traded Funds; or (iii) two (2) brokers and two (2) Registered Options Traders for options. The Allocations Committee would be chaired by the Chief Executive

[5] *See* Current Amex Rule 27(a)(i) and (ii).

[6] *See* Current Amex Rule 27(a)(iii).

Officer who does not vote except to make or break a tie. The minimum quorum requirement would be four persons.[7]

The Exchange also seeks to provide the current Performance Committee [8] with sole authority to reallocate securities in connection with specialist unit transfers resulting from business transactions. The current procedure in Amex Rule 27 provides that the Allocations Committee will reallocate the securities resulting from a specialist unit transfer in accordance with the agreement of the parties unless the Performance Committee determines that a countervailing institutional interest dictates that there should be some other allocation. In such a case, the Allocations Committee will reallocate the securities according to instructions received by the Performance Committee or as it deems appropriate if no instructions are received. The proposal would amend Amex Rule 26 by providing the sole authority and power for the reallocation of securities in connection with the transfer of specialist units in the Performance Committee rather than the Allocations Committee. The Exchange believes that this change will establish a better process for reallocations due to specialist unit transfers.

The Exchange believes that the proposed combination of the Equities, Options and Special Allocations Committees and the change in the composition of the Allocations Committee would better serve the interests of the Exchange and its members by reducing potential inefficiencies in connection with the allocation process. The Exchange's experience to date has shown that the process of allocating and reallocating equities and options classes may be overly and unnecessarily bureaucratic. The Exchange believes that this is largely due to the number of Equities, Options and Special Allocations Committee members and the composition of the Equities, Options and Special Allocations Committees. Accordingly, the Exchange proposes to change the number and composition of the Allocations Committee to implement an improved process for allocating and reallocating equities, options and other securities traded on the Exchange to specialist units. The Exchange further states that providing the Performance Committee with the sole authority to reallocate securities in connection with specialist unit transfers would enhance the process of reallocation in these special circumstances.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, as amended; or

B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–068 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–068. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–068 and should be submitted on or before September 22, 2005.

[7] The Exchange has represented that, for the purposes of determining a quorum, the Chief Executive Officer shall count as one of the six persons, whereby four of the six persons would constitute a quorum. However, the Chief Executive Officer would not vote except to make or break a tie. Telephone conversation of August 10, 2005, between Jeffery Burns, Associate General Counsel, Amex and David Michehl, Attorney, Division of Market Regulation, Commission.

[8] The Board pursuant to Article II, Section 3 of the Constitution has delegated to the Performance Committee the authority to evaluate specialist, registered traders and floor broker performance and to take specified action in response to particular performance deficiencies.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4772 Filed 8–31–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 19, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–22152.

Date Filed: August 16, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 2005.

Description: Joint Application of SkyWest Airlines, Inc. (''SkyWest'') and Atlantic Southeast Airlines, Inc. (''ASA''), requesting a disclaimer of jurisdiction, or, in alternative, approval of the de facto transfer of certain international certificate and other authorities held by ASA to SkyWest.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–17425 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 20–DATABUS, Aviation Databus Assurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availably of and requests comments on a proposed Advisory Circular (AC) 20–DATABUS, Aviation Databus Assurance. This proposed AC provides guidance for manufacturers of aircraft, aircraft engine, and avionics incorporating databuses and databus technology in the design of their aircraft, aircraft engine, or avionics systems. In the proposed AC, we recommend how you as the manufacturer, may get design and airworthiness approval for your databus.

DATES: Comments must be received on or before September 16, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. John Lewis, or deliver comments to: Federal Aviation Administration, Room 825, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. John Lewis, AIR–120, Room 835, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 493–4841, FAX: (202) 267–5340. Or, via e-mail at: *john.lewis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed AC may be examined, before and after the comment closing date, in Room 825, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director, Aircraft Certification Service, before issuing the final Advisory Circular.

Background

Aircraft, aircraft engine, and avionics manufacturers may choose from several databus configurations for use on aircraft. The function of a databus is to transfer information between avionics modules, components, or line replaceable units (LRU) installed in an aircraft. As such, these databuses are becoming more complex as aircraft, aircraft engine, and avionics manufacturers integrate more avionics components into the aircraft and aircraft engine data sources, resulting in large data transfers between data buses. System design engineers have considerable flexibility when designing a databus because of the many physical and logical configurations for airborne systems architecture, data units or packets, protocols, message traffic, and so on, thereby providing manufacturers, vendors, and integrators more latitude when configuring databuses. This proposed AC contains the criteria applicants must address when developing, selecting, or integrating databus technology they will use to show compliance with the appropriate certification requirements for their aircraft or aircraft engine.

How To Obtain Copies

You may get a copy of the proposed AC from the Internet at: *www.airweb.faa.gov/rgl.* Once on the RGL Web site, select ''Draft Advisory Circular'', then select the document by number. See section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address if requesting a copy by mail.

Issued in Washington, DC, on August 25, 2005.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–17383 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Jackson County-Reynolds Field; Jackson, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the lease of the airport property. The proposal consists of two (2) parcels of land totaling approximately 68 acres. Current use and present condition is vacant grassland with intermittent

[11] 17 CFR 200.30–3(a)(12).

wetland areas. The land is currently zoned residential. Parcel 15A was acquired under FAA Project No. 8–26–0051–02. Parcel 62 was not acquired with federal funds. There are no impacts to the airport by allowing the airport to lease the property.The airport desires to enter into a long-term lease to provide a long-term revenue source. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before October 3, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence C. King, Project Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO 607, 11677 South Wayne Road, Romulus, Michigan 48174. Telephone Number (734) 229–2933/ FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Jackson County-Reynolds Field, Jackson, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Jackson, Jackson County, Michigan, and described as follows:

PARCEL 15A—37.444 Acres

Part of the Southwest ¼ of the Northwest ¼ of Section 28, Town 2 South, Range 1 West, Blackman Township, Jackson County, Michigan being described as:

Commencing at the West ¼ post of said Section 28; thence North 00°11′29″ East, along the West line of said Section 28, a distance of 54.81 feet to the North right-of-way line of I–94 and being the Point of Beginning of this description; thence continuing North 00°11′29″ East, along said West section line, a distance of 1271.67 feet to the Northwest corner of the Southwest ¼ of the Northwest ¼ of said Section 28; thence North 89°44′57″ East, along the North line of said Southwest ¼ of the Northwest ¼, a distance of 1325.56 feet to the Northeast corner of said Southwest ¼ of the Northwest ¼; thence South 00°02′47″ West, along the East line of said Southwest ¼ of the Northwest ¼, a distance of 1132.89 feet to the North right-of-way line of I–94; thence 1274.58 feet, along a curve to the right on said North right-of-way line, with a radius of 5579.65 feet, a central angle of 13°07′01″, and a chord of South 83°29′06″ West 1274.58 feet to a point of tangency; thence North 89°57′24″ West, along said North right-of-way line, a distance of 62.53 feet to the Point of Beginning.

Subject to a road right-of-way over the West 33.00 feet as used and occupied by Doney Road.

Subject to an easement for the Hurd-Marvin Drain.

Subject to an easement for Consumers Power as recorded in Liber 804, Page 275, Jackson County Records.

Subject to an easement for storm drainage over the East 10.00 feet of the Southwest ¼ of the Northwest ¼ of Section 28 lying North of the Hurd-Marvin Drain as recorded in Liber 720, Page 236, Jackson County Records.

PARCEL 62—30.453 Acres

Part of the Southeast ¼ of the Northwest ¼ and part of the Southwest ¼ of the Northeast ¼ of Section 28, Town 2 South, Range 1 West, Blackman Township, Jackson County, Michigan being described as:

Commencing at the West ¼ post of said Section 28; thence North 00°11′29″ East, along the West line of said Section 28, a distance of 1326.48 feet to the Northwest corner of the Southwest ¼ of the Northwest ¼ of said Section 28; thence North 89°44′57″ East, along the North line of said Southwest ¼ of the Northwest ¼, a distance of 1325.56 feet to the Northeast corner of said Southwest ¼ of the Northwest ¼ and being the Point of Beginning of this description; thence continuing North 89°44′57″ East, along the North line of the Southeast ¼ of the Northwest ¼, a distance of 1325.56 feet to the North-South ¼ line of said Section 28; thence North 89°40′07″ East, along the North line of the Southwest ¼ of the Northeast ¼ of said Section 28, a distance of 123.00 feet; thence South 00°05′53″ East, parallel with and 123.00 feet East of said North-South ¼ line, a distance of 663.98 feet to the North right-of-way line of I–94; thence the following three courses along said I–94 right-of-way,

(1) South 67°22′11″ West a distance of 193.46 feet;

(2) South 71°22′56″ West a distance of 794.42 feet to a point of curvature;

(3) 539.91 feet, along a curve to the right with a radius of 5579.65 feet, a central angle of 05°32′39″, and a chord of South 74° 09′ 16″ West 539.70 feet to the West line of said Southeast ¼ of the Northwest ¼; thence North 00°02′47″ East, along said West line of the Southeast ¼ of the Northwest ¼, a distance of 1132.89 feet to the Point of Beginning.

Subject to an easement for the Hurd-Marvin Drain.

Subject to an easement for storm drainage over part the West 20.00 feet of the North 20.00 feet of the Southeast ¼ of the Northwest ¼ of Section 28 as recorded in Liber 721, Page 836, Jackson County Records.

Subject to easements for sanitary sewer over part of the Southeast ¼ of the Northwest ¼ of Section 28 as recorded in Liber 872, Page 320, and Liber 868, Page 307, Jackson County Records.

Issued in Romulus, Michigan, on August 8, 2005.

Winsome A. Lenfert,

Acting Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–17382 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program Revision Notice; Austin, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program revision submitted by the city of Austin under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On April 5 and May 8, 2000, The FAA determined that the noise exposure maps submitted by the city of Austin under part 150 complied with applicable requirements. On August 5, 2005, the FAA approved a revision to the Austin-Bergstrom International Airport Noise Compatibility Program. The program measure in this revision was fully approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Austin-Bergstrom International Airport Noise Compatibility Program revision is August 5, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Blackford, Environmental

Specialist, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650. Telephone (817) 222–5607. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program revision for Austin-Bergstrom International Airport, effective August 5, 2005.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each Airport's Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations.

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an Airport Noise Compatibility Program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA regional office in Fort Worth, Texas.

The city of Austin submitted to the FAA on April 5, 1999, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 1998 through March 1999. Subsequently, the city submitted a revised 2004 noise exposure map, which the FAA approved on May 8, 2000. The Austin-Bergstrom International Airport's noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 5, 1999 and May 8, 2000. Notices of these determinations were published in the **Federal Register** on April 20, 1999 and May 25, 2000, respectively.

The Austin-Bergstrom International Airport study contains a proposed Noise Compatibility Program revision comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program revision as described in section 47504 of the Act. The FAA began its review of the program revision on February 11, 2005, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such program.

The submitted program revision contained one (1) proposed action for noise mitigation off the airport. The FAA completed its review and determined that the procedural land substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program revision, therefore, was approved by the FAA effective August 5, 2005.

Outright approval was granted for the one (1) specific program measure. Approved action elements included a land use mitigation measure involving a land acquisition program and a sound insulation program. These determinations are set forth in detail in a Record of Approval signed by the Associate Administrator for Airports, ARP–1, on August 5, 2005. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Austin-Bergstrom International Airport. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Fort Worth, Texas, August 24, 2005.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 05–17381 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

AGENCIES: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. On October 10, 2003, the Administrator signed Order No. 1110–138 establishing the NPOAG as an aviation rulemaking committee (ARC). This notice informs the public of a vacancy on the NPOAG ARC, for a member representing air Indian tribal interests, and invites interested persons to apply to fill the vacancy.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Executive Resource Staff, Western Pacific Region Headquarters,

15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, E-mail: *Barry.Brayer@faa.gov,* or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 350, Ft. Collins, CO 80525, telephone (970) 225–3563, or *Karen_Trevino@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator and the Director (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

By Order No. 1110–138, October 10, 2003, the NPOAG became an aviation rulemaking committee (ARC).

The NPOAG ARC provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Members of the NPOAG ARC may be allowed certain travel expenses as authorized by section 5703 of title 5, United States Code, for intermittent Government Service.

The NPOAG ARC is made up of four members representing the air tour industry, four members representing environmental interests, and two members representing Native American interests.

Public Participation in the NPOAG ARC

In order to maintain the balanced representation of the group, the FAA and the NPS invite persons interested in serving on the NPOAG ARC to represent Indian Tribal interests to contact either of the persons listed in **FOR FURTHER INFORMATION CONTACT**. Requests to serve on the NPOAG ARC should be made in writing and postmarked on or before. The request should indicate the Indian tribe that you are a member of, and what expertise you would bring to Native American interests while serving on the NPOAG. The term of service for NPOAG members is 3 years.

Issued in Washington, DC on August 26, 2005.

William C. Withycombe,

Regional Administrator, Western-Pacific Region.

[FR Doc. 05–17385 Filed 8–31–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34736]

Watco Companies, Inc.—Continuance in Control Exemption—Yellowstone Valley Railroad, Inc

Watco Companies, Inc. (Watco), has filed a verified notice of exemption to continue in control of the Yellowstone Valley Railroad, Inc. (YVRR), upon YVRR's becoming a Class III rail carrier.[1]

The transaction was scheduled to be consummated on or shortly after August 9, 2005.[2]

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34737, *Yellowstone Valley Railroad, Inc.—Lease and Operation Exemption—BNSF Railway Company.* In that proceeding, YVRR seeks to acquire by lease from the BNSF Railway Company and operate approximately 171.97 miles of rail line extending between: (1) Milepost 6.0, near Glendive, MT, and milepost 78.6, near Snowden, MT; and (2) milepost 0.93, near Bainville, MT, and milepost 100.3, near Scobey, MT.[3]

Watco, a Kansas corporation, is a noncarrier that currently controls 12 Class III rail carriers: South Kansas and Oklahoma Railroad Company (SKO); Palouse River & Coulee City Railroad, Inc. (PRCC); Timber Rock Railroad, Inc. (TIBR); Stillwater Central Railroad, Inc. (SLWC); Eastern Idaho Railroad, Inc. (EIRR); Kansas & Oklahoma Railroad, Inc. (K&O); Pennsylvania Southwestern Railroad, Inc. (PSWR); Great Northwest Railroad, Inc. (GNR); Kaw River Railroad, Inc. (KRR); Mission Mountain Railroad, Inc. (MMT); Appalachian & Ohio Railroad, Inc. (AO); and Mississippi Southern Railroad, Inc. (MSRR).

Applicant states that: (1) The rail lines operated by SKO, PRCC, TIBR, SLWC, EIRR, K&O, PSWR, GNR, KRR, MMT, AO and MSRR do not connect with the rail lines being leased by YVRR; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines being acquired by YVRR with any railroad in the Watco corporate family; and (3) neither YVRR nor any of the carriers controlled by Watco are Class I carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to reduce overhead expenses and coordinate billing, maintenance, mechanical and personnel policies and practices of applicant's rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by the 13 railroads.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34736, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

[1] Watco owns 100% of the issued and outstanding stock of YVRR.

[2] Although Watco indicated that this transaction would be consummated on or shortly after August 9, 2005, YVRR, in STB Finance Docket No. 34737, indicated that the underlying lease transaction would not be consummated until August 15, 2005.

[3] YVRR also seeks to acquire incidental, overhead trackage rights over the BNSF rail lines located between: (1) milepost 78.6, on the BNSF Sidney Subdivision, near Snowden, MT, and milepost 0.93, on the BNSF Scobey Subdivision, near Bainville, MT, via the BNSF Glasgow Subdivision between Snowden and Bainville; and (2) milepost 6.0, near Glendive, MT, and milepost 0.0, at Glendive, MT.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 23, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–17148 Filed 8–31–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34737]

Yellowstone Valley Railroad, Inc.—Lease and Operation Exemption—BNSF Railway Company

Yellowstone Valley Railroad, Inc. (YVRR), a noncarrier,[1] has filed a verified notice of exemption under 49 CFR 1150.31 to lease from BNSF Railway Company (BNSF) and operate two rail lines totaling 171.97 miles. The rail lines are located: (1) between milepost 6.0, near Glendive, MT, and milepost 78.6, near Snowden, MT; and (2) between milepost 0.93, near Bainville, MT, and milepost 100.3, near Scobey, MT. In conjunction with the lease of the rail lines, YVRR will acquire incidental, overhead trackage rights over the BNSF rail lines located between: (1) milepost 78.6, on the BNSF Sidney Subdivision near Snowden, MT, and milepost 0.93, on the BNSF Scobey Subdivision, near Bainville, MT, via the BNSF Glasgow Subdivision between Snowden and Bainville; and (2) milepost 6.0, near Glendive, MT, and milepost 0.0, at Glendive, MT.

This transaction is related to STB Finance Docket No. 34736, *Watco Companies, Inc.—Continuance in Control Exemption—Yellowstone Valley Railroad, Inc,* wherein Watco Companies, Inc., has concurrently filed a verified notice of exemption to continue in control of YVRR upon YVRR's becoming a Class III rail carrier.

YVRR certifies that the projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on August 15, 2005.[2]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34737, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 23, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–17096 Filed 8–31–05; 8:45 am]

BILLING CODE 4915–01–P

[1] YVRR is controlled by Watco Companies, Inc., a noncarrier that also controls twelve (12) Class III railroads operating in thirteen States.

[2] By decision served in this proceeding on August 10, 2005, Chairman Nober denied a request to stay the effectiveness of the exemption.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 26, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 3, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1498.

Type of Review: Extension.

Title: REG–209826–96 (NPRM) Application of the Grantor Trust Rules to Nonexempt Employees' Trusts.

Description: The regulations provide rules for the application of the grantor trust rules to certain nonexempt employees' trust. Taxpayers must indicate on a return that they are relying on a special rule to reduce the over funded amount of the trust.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545–1797.

Type of Review: Extension.

Title: REG–106876–00 (Final), Revision of Income Tax Regulations under Section 897, 1445 and 6109 to require use of Taxpayer Identifying Numbers on Submission under the Section 897 and 1445 Regulations.

Description: The collection of information relates to applications for withholding certificates under Treas. Reg. 1.1445–3 to be filed with the IRS with respect to (1) dispositions of U.S. real property interests that have been used by foreign persons as a principled residence within the prior 5 years and excluded from gross income under section 121 and (2) dispositions of U.S. real property interests by foreign persons in deferred like kind exchanges that qualify for nonrecognition under section 1031.

Respondents: Individuals or households and business or other-for-profit.

Estimated Total Burden Hours: 600 hours.

OMB Number: 1545–1935.

Type of Review: Extension.

Title: Notice 2005–40 election to defer net experience loss in a multiemployer plan.

Description: This notice describes the election that must be filed by an eligible multiemployer plan's enrolled actuary to the Service in order to defer a net experience loss. The notice also describes that notification that must given to plan participants and beneficiaries, to labor organizations, to contributing employers and to the Pension Benefit Guaranty Corporation within 30 days of making an election with the Service and the certification that must be filed if a restricted amendment is adopted.

Respondents: Business or other for profit and not-for-profit institutions.

Estimated Total Burden Hours: 960 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–17421 Filed 8–31–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 25, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 3, 2005 to be assured of consideration.

United States Mint

OMB Number: 1525–0013.

Type of Review: Extension.

Title: Application for Commercial Product License and Application for Intellectual Property Use.

Form: U.S. Mint form 3044 and form 3045.

Description: The application forms allow individuals and business entities to apply for Non-product License or Commercial Product License to use United States Mint intellectual property and trademark and copyright materials for products.

Respondents: Business and other for-profit and individuals or households.

Estimated Number of Respondents: 120.

Estimated Total Reporting Burden: 131 hours.

Clearance Officer: Yvonne Pollard, (202) 722–7310, United States Mint, 799 9th Street, NW., 4th Floor, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–17422 Filed 8–31–05; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2005–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2005–28, Automatic Consent to Change to the Alternative Tax Book Value Method of Valuing Assets for Expense Apportionment Purposes.

DATES: Written comments should be received on or before October 31, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Automatic Consent to Change to the Alternative Tax Book Value Method of Valuing Assets for Expense Apportionment Purposes.

OMB Number: 1545–1933.

Revenue Procedure Number: Revenue Procedure 2005–28.

Abstract: Revenue Procedure 2005–28 provides the administrative procedure under which an eligible taxpayer may obtain automatic consent to change from the fair market value method to the alternative tax book value method of valuing assets for purposes of apportioning expenses under section 1.861–9T(g) of the Temporary Income Regulations.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals or households.

Estimated number of respondents: 200.

Estimated annual burden per respondent: 30 minutes.

Estimated total annual reporting burden: 100 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 24, 2005.

Glenn Kirkland,

OMB Reports Clearance Officer.

[FR Doc. E5–4771 Filed 8–31–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 27, 2005, at 11 a.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, September 27, 2005, at 11 a.m., Eastern Time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: August 25, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–4770 Filed 8–31–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

VA Research Misconduct Policy

AGENCY: Department of Veterans Affairs.

ACTION: Notice of VA Research Misconduct Policy.

SUMMARY: On December 6, 2000, the Office of Science and Technology Policy (OSTP), Executive Office of the President, published a notification of a final Federal Policy on Research Misconduct (Federal Policy) (65 FR 76260). That policy set forth a definition of ''research misconduct'' and provided basic guidelines for responding to allegations of misconduct for all Federally-funded research and proposals for such research. Federal agencies that conduct or support research, including the Department of Veterans Affairs (VA), are required to implement the Federal Policy.

VA publicized its intent to adopt the Federal Policy on April 30, 2002 (67 FR 21325). On May 4, 2005, VA finalized and released its research misconduct policy, Veterans Health Administration (VHA) Handbook 1058.2. These internal policies and procedures are fully consistent with and circumscribed by the Federal Policy. To the extent that the Federal Policy was published in the **Federal Register** subject to notice and comment requirements, no additional substantive policies affecting the public are created by VA's internal research misconduct policies and procedures.

These policies and procedures apply only to allegations of research misconduct as defined herein. Other ''research improprieties'' are handled according to separate, extant VA policies and procedures.

FOR FURTHER INFORMATION CONTACT: Peter Poon, Health Science Specialist, Office of Research Oversight (10R), 811 Vermont Ave., NW., Suite 574, Washington, DC 20420, (202) 565–8107.

SUPPLEMENTARY INFORMATION: VA's internal research misconduct policies and procedures are fully consistent with and circumscribed by the Federal Policy.

I. Research Misconduct Defined

Consistent with the Federal Policy, VHA Handbook 1058.2 defines research misconduct as ''fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.'' The component terms ''fabrication, falsification, and plagiarism,'' as well as ''research'' are further defined, consistent with the Federal Policy.

II. Findings of Research Misconduct

VHA Handbook 1058.2 adopts the Federal Policy standard for making a finding of research misconduct. Specifically, a finding of research misconduct requires that:

- There be a significant departure from accepted practices of the relevant research community; and
- The misconduct be committed intentionally, knowingly, or with reckless disregard for the integrity of the research; and
- The allegation is proven by a preponderance of evidence.

III. Responsibilities of VA and Local VA Research Facilities

Under VHA Handbook 1058.2, local VA Medical Centers (VAMCs) conducting research bear primary responsibility for the prevention and detection of research misconduct within their own facilities and conducting inquiries and investigations when required. Each VAMC designates a Research Integrity Officer (RIO) to oversee research misconduct cases at its facility. In exceptional circumstances, the VA's Office of Research Oversight (ORO) may conduct its own investigation.

The purpose of an Investigation is to determine whether and to what extent research misconduct has occurred, who is responsible, and what corrective actions are appropriate. The VAMC Director transmits the Investigation Committee's Report, along with his or her own recommendations, to the designated Veterans Integrated Service Network (VISN) Director.

The VISN Director adjudicates all cases of research misconduct within his or her geographical Network. The VISN Director's final decision and the Investigation Report are then reviewed by ORO Central Office for procedural conformance with VHA Handbook 1058.2. If the procedures substantially adhered to the Handbook, ORO notifies the Respondent of the outcome.

Respondents have the opportunity to submit written appeals of research misconduct findings and proposed corrective actions to the Under Secretary for Health. The Under Secretary for Health reviews and makes a final decision on such appeals.

IV. Fair and Timely Procedures

- *Safeguards for Informants.* VHA Handbook 1058.2 includes provisions for protecting from retaliation informants who make good faith and reasonable allegations of research misconduct to appropriate authorities or who cooperate in good faith with inquiries or investigations of research misconduct.
- *Safeguards for Respondents.* VHA Handbook 1058.2 also includes provisions for protecting the rights of those who are the subject of research misconduct allegations, including timely notification, reasonable access to the data and other evidence supporting the allegations, and the opportunity to respond to allegations, evidence, and proposed findings of research misconduct (if any). Respondents may obtain the advice of legal counsel or a personal advisor, and have an opportunity to appeal research misconduct findings and proposed corrective actions to the Under Secretary for Health.
- *Objectivity, Fairness, and Expertise.* VA's research misconduct policies and procedures include provisions for ensuring objectivity, fairness, and expertise in the review of allegations. The Handbook requires that those acting in the role of RIO, member of an Inquiry

or Investigation Committee, and Adjudicator be replaced if they have an actual or apparent conflict of interest that cannot be resolved with respect to a particular case.

• *Timeliness.* VHA Handbook 1058.2 establishes specific time limits for the Inquiry (30 days), Investigation (90 days), Adjudication (30 days), and Appeal (45 days), with allowances for appropriate extensions.

• *Confidentiality During the Inquiry, Investigation, and Decision-Making Process.* VA's research misconduct policies and procedures emphasize the privacy of all participants and the confidentiality of information gathered in research misconduct proceedings to the extent possible consistent with a fair and thorough investigation and as allowed by law. Only those individuals who are specifically authorized to review a misconduct allegation will be provided with nonpublic information in connection with the misconduct proceeding.

V. VA Administrative Actions

VHA Handbook 1058.2 lists a number of criteria to be considered in proposing corrective actions when research misconduct is found: the extent of the misconduct; the degree to which the misconduct was knowing, intentional, or reckless; the presence or absence of a pattern of misconduct; the consequences of the misconduct; the Respondent's position and responsibilities; the cooperation of the Respondent during the Investigation; the likelihood of rehabilitation; the type of corrective actions imposed in past cases with similar features, if any; and any other extenuating or aggravating circumstances.

VA may take interim action(s) as necessary. If there is reasonable indication of a possible criminal violation, the matter will be promptly referred to the VA Inspector General or other appropriate investigative body.

(Authority: 65 FR 76260)

Dated: August 26, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E5–4787 Filed 8–31–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 70, No. 169

Thursday, September 1, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 05–004–1]

RIN 0579–AB93

Importation of Whole Cuts of Boneless Beef from Japan

Correction

In proposed rule document 05–16422 beginning on page 48494 in the issue of Thursday, August 18, 2005, make the following correction:

On page 48497, in the second column, in the last line, Footnote 9 is corrected to read as set forth below:

''[9]See FSIS Notice 10-04.

FSIS. Verification instructions for the interim final rule regarding specified risk materials (SRMs) in cattle). Notice. January 23, 2005. (Available at *http://www.fsis.usda.gov/OPPDE/rdad/FSISNotices/9-04.htm).*

FSIS. FSIS Technical Services Center: Common BSE Questions and Answers. March 19, 2005. (Available at *http://www.fsis.usda.gov/oa/FAQ/bse__techcenter.htm*).''

[FR Doc. C5–16422 Filed 8–31–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
September 1, 2005

Part II

Election Assistance Commission

Publication of State Administrative Complaint Procedures Pursuant to the Help America Vote Act; Notice

ELECTION ASSISTANCE COMMISSION

Publication of State Administrative Complaint Procedures Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 253(b)(2) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** the State administrative complaint procedures submitted by thirty-one States that had not included these procedures in their State plans previously published by EAC in the **Federal Register**.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the procedures published herewith should be made in writing to the chief election official of the individual States at the address listed below.

SUPPLEMENTARY INFORMATION: HAVA section 253(b)(2) requires States, as a condition of receiving requirements payments in accordance with HAVA sections 251 and 252, to have filed with EAC a plan for the implementation of the uniform, nondiscriminatory administrative complaint procedures required under HAVA section 402 (or to have included such a plan in the State plan filed under HAVA section 254), and to have such procedures in place. If the State did not include such an implementation plan in its State plan, HAVA section 253(b)(2) requires that the requirements of HAVA sections 255(b) and 256 apply to the complaint procedures implementation plan. HAVA section 256 requires the State to make a preliminary version of the plan available for public inspection and comment for thirty days, to publish notice that the plan is so available, and to take public comments into account in preparing the complaint procedures implementation plan filed with EAC. HAVA section 255(b) requires EAC to publish the plan in the **Federal Register**, after the required State public comment period.

On March 24, 2004, the EAC published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. Twenty-one States included their administrative complaint procedures in their original HAVA State plans. On September 30, 2004, EAC published in the **Federal Register** amendments to the State plans submitted by Nevada and South Carolina that also included the States' administrative complaint procedures. 69 FR 58630. On March 11, 2005, EAC published in the **Federal Register** amendments to Oklahoma's State plan that also included the State's administrative complaint procedures. 70 FR 12356. Another thirty-one States have submitted plans to implement the administrative complaint procedures separately from any State plans filed with EAC. These implementation plans are published herein, in accordance with HAVA sections 253(b)(2) and 255(b).

EAC notes that the plans to implement State administrative complaint procedures that are published herein include only those that have already met the notice and comment requirements of HAVA section 256, as required by HAVA section 253(b)(2). EAC wishes to acknowledge the effort that went into the developing these implementation plans and encourages further public comment, in writing, to the State election official of the individual States listed below.

Thank you for your interest in improving the voting process in America.

Chief State Election Officials

Alabama

The Honorable Nancy Worley, Secretary of State, P.O. Box 5616, Montgomery, AL 36103–5616, Phone: 334–242–7205, Fax: 334–242–4993, E-mail: *sos@sos.al.gov.*

Alaska

Ms. Laura A. Glaiser, Director, State of Alaska Division of Elections, PO Box 110017, Juneau, AK 99811–0017, Phone: 907–465–4611, Fax: 907–465–3203, E-mail: *elections@gov.state.ak.us.*

Arizona

The Honorable Jan Brewer, Secretary of State, Capitol Executive Tower 7th Floor, 1700 West Washington Street, Phoenix, AZ 85007–2888, Phone: (602) 542–8683, Fax: (602) 542–6172, E-mail: *elections@azsos.gov.*

Arkansas

The Honorable Charlie Daniels, Secretary of State, 256 State Capitol, Building, Little Rock, AR 72201, Phone: 501–682–3419, Fax: 501–682–3408, E-mail: *electionsemail@sos.arkansas.gov.*

Colorado

Mr. William A. Hobbs, Deputy Secretary of State, 1700 Broadway, Suite 270, Denver, CO 80290, Phone: 303–894–2200, Fax: 303–869–4861, E-mail: *sos.elections@sos.state.co.us.*

Connecticut

The Honorable Susan Bysiewicz, Secretary of State, State Capitol, Room 104, Hartford, CT 06106, Phone: 860–509–6100, Fax: 860–509–6127, E-mail: *lead@po.state.ct.us.*

District of Columbia

Ms. Alice P. Miller, Executive Director, Board of Elections & Ethics, 441 Fourth St. NW, Suite 250N, Washington, DC 20001, Phone: 202–727–2525, Fax 202–347–2648, E-mail: *boee@dc.gov.*

Georgia

The Honorable Cathy Cox, Secretary of State, 2 Martin Luther King Jr. Drive S.E., Suite 1104, West Tower, Atlanta, GA 30334–1530, Phone: 404–656–2871, Fax: 404–651–9531, E-mail: *sosweb@sos.state.ga.us.*

Guam

Mr. Gerald A. Taitano, Executive Director, Guam Election Commission, P.O. Box BG, Hagåtña, GU 96910, Phone: 671–477–9791, Fax: 671/477–1895, E-mail: *gec@ite.net.*

Hawaii

Mr. Dwayne D. Yoshina, Chief Election Officer, State of Hawaii Office of Elections, 802 Lehua Avenue, Pearl City, HI 96782, Phone: 808–453–8683, Fax: 808–453–6006, E-mail: *elections@aloha.net.*

Idaho

The Honorable Ben Ysursa, Secretary of State, P.O. Box 83720, Boise, ID 83720–0080, Phone: 208–334–2852, Fax: 208–334–2282, E-mail: *sosinfo@idsos.state.id.us.*

Illinois

Mr. Daniel W. White, Executive Director, State Board of Elections, P.O. Box 4187, Springfield, IL 62708, Phone: 217–782–4141, Fax: 217–782–5959, E-mail: *dwhite@elections.state.il.us.*

Kentucky

Ms. Sarah Ball Johnson, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, KY 40601–3240, Phone: 502–573–7100, Fax: 502–573–4369, E-mail: *sarahball.johnson@ky.gov.*

Massachusetts

The Honorable William Francis Galvin, Secretary of the Commonwealth, State House, Room 337, Boston, MA 02133, Phone: 617–727–2828, Fax: 617–742–3238, E-mail: *elections@sec.state.ma.us.*

Mississippi

The Honorable Eric Clark, Secretary of State, P.O. Box 136, Jackson, MS 39205–0136, Phone: 601–359–6359, Fax: 601–359–5019, E-mail: *Administrator@sos.state.ms.us.*

Missouri

The Honorable Robin Carnahan, Secretary of State, State Information Center, PO Box 1767, Jefferson City, MO 65102–1767, Phone: 573–751–2301, Fax: 573–526–3242, E-mail: *elections@sos.mo.gov.*

New Hampshire

The Honorable William Gardner, Secretary of State, State House, Room 204, Concord, New Hampshire 03301, Phone: 603–271–3242, Fax: 603–271–6316, E-mail: *elections@sos.state.nh.us.*

New Jersey

Mr. Ramón de la Cruz, Director, Division of Elections, Office of the Attorney General, P.O. Box 304, Trenton, NJ 08625–0304, Phone: 609–292–3760, Fax: 609–777–1280, E-mail: *njelections@lps.state.nj.us.*

New Mexico

The Honorable Rebecca Vigil-Giron, Secretary of State, State Capitol Annex North, 325 Don Gaspar, Suite 300, Santa Fe, NM 87503, Phone: 505–827–3600, Fax: 505–827–8403, E-mail: *secstate@state.nm.us.*

New York

Mr. Peter Kosinski, Deputy Executive Director, State Board of Elections, 40 Steuben Street, Albany, NY 12207–2108, Phone: 518–474–8100, Fax: 518–486–4068; E-mail: *info@elections.state.ny.us.*

Ohio

The Honorable J. Kenneth Blackwell, Secretary of State, 180 E. Broad Street, 16th Floor, Columbus, OH 43215, Phone: 614–466–2655, Fax: 614–644–0649, E-mail: *election@sos.state.oh.us.*

Oregon

The Honorable Bill Bradbury, Secretary of State, 141 State Capitol, Salem, OR 97310–0722, Phone: 503–986–1518, Fax: 503–373–7414, E-mail: *elections-division@sosinet.sos.state.or.us.*

Puerto Rico

Lcdo. Aurelio Gracia Morales, Presidente, State Elections Commission, P.O. Box 195552, San Juan, PR 00919–5552, Phone: 787–77–8675, Fax: 787–296–0173, E-mail: *comentarios@cee.gobierno.pr.*

Rhode Island

Mr. Robert Kando, Executive Director, Rhode Island Board of Elections, 50 Branch Avenue, Providence, RI 02904–2790, Phone: 401–222–2345, Fax: 401–222–3135, E-mail: *campaignfinance@elections.ri.gov.*

South Dakota

The Honorable Chris Nelson, Secretary of State, Capitol Building, 500 East Capitol Avenue, Suite 204, Pierre, SD 57501–5070, Phone: 605–773–3537, Fax: 605–773–6580; E-mail: *sdsos@state.sd.us.*

Texas

The Honorable Roger Williams, Secretary of State, P.O. Box 12887, Austin, TX 78711–2887, Phone: 512–463–5770, Fax: 512–475–2761, E-mail: *secretary@sos.state.tx.us.*

Vermont

The Honorable Deborah L. Markowitz, Secretary of State, Redstone Building, 26 Terrace Street, Drawer 09, Montpelier, VT 05609–1101, Phone: 802–828–2304, Fax: 802–828–5171; E-mail: *dmarkowitz@sec.state.vt.us.*

Virginia

Ms. Jean R. Jensen, Secretary, State Board of Elections, 200 North 9th Street, Suite 101, Richmond, VA 23219, Phone: 804–864–8901, Fax: 804–371–0194, E-mail: *HAVA@sbe.virginia.gov.*

Virgin Islands

Mr. John Abramson, Jr., Supervisor of Elections, Election System of the Virgin Islands, P.O. Box 1499, Kingshill, St. Croix, VI 00851–1499, Phone: 340–773–1021, Fax: 340–773–4523, E-mail: *electionsys@unitedstates.vi.*

Washington

The Honorable Sam Reed, Secretary of State, P.O. Box 40220, Olympia, WA 98504–0220, Phone: 360–902–4151, Fax: 360–586–5629, E-mail: *elections@secstate.wa.gov.*

Wisconsin

Mr. Kevin J. Kennedy, Executive Director, Wisconsin State Elections Board, P.O. Box 2973, Madison, WI 53701–2973, Phone: 608–266–8005, Fax: 608–267–0500, E-mail: *seb@seb.state.wi.us.*

Dated: August 22, 2005.

Gracia M. Hillman,

Chair, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

STATE OF ALABAMA

THE OFFICE OF THE SECRETARY OF STATE

CHAPTER 820-2-5 PROCEDURE TO COMPLAIN ABOUT VIOLATIONS OF TITLE III OF THE FEDERAL HELP AMERICA VOTE ACT OF 2002

TABLE OF CONTENTS

820-2-5-.01 Applicability And Purpose.

(1) This Chapter is established for the purpose of offering the public an administrative complaint procedure for allegations pertaining to violations of Title III of the federal Help America Vote Act of 2002, Pub. L. 107-252.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-4-250(a); §§1 and 8 of Act 03-313; Attorney General Opinion No. 97-00109.

History: New Rule: Filed September 26, 2003; effective October 31, 2003.

820-2-5-.02 Procedures.

(1) Complaints.

(a) Complaints which include a request for a hearing shall proceed in accordance with Chapter 820-1-2, Rules of Practice, except as otherwise provided in this Chapter.

(b) Complaints must be submitted in writing and notarized, and signed and sworn by the complaining person. Complaints may be submitted on a form prescribed by the Secretary of State for this purpose.

(c) Complaints must identify either in the heading or the first paragraph one or more of the following sections of Title III of the federal Help America Vote Act of 2002 which the complaining person alleges has been violated:

1. Section 301. Voting System Standards.

2. Section 302. Provisional Voting and Voting Information Requirements.

3. Section 303. Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register By Mail.

4. Section 304. Minimum Requirements.

5. Section 305. Methods of Implementation Left to Discretion of State.

6. Section 311. Adoption of Voluntary Guidance By Commission.

(d) The complaint shall also identify the following:

1. To the extent known, which individuals failed to comply with Title III;

2. To the extent known, where the violation of Title III occurred;

3. A short and plain statement of the occurrence, procedure or practice which violates a particular section in Title III; and

4. Explain why the occurrence, procedure, or practice is a violation of Title III.

(2) Complaints which fail to request a hearing shall be reviewed in the following manner:

(a) The staff or other designee(s) of the Secretary of State, such as county Judges of Probate, shall investigate the complaint. Within 30 days from the receipt of the complaint, except for good cause shown, the investigator shall issue a written report and recommendation to the Secretary of State. The Secretary of State may reject, approve or require additional investigation associated with some or all of the report and recommendation.

(b) Upon the satisfaction of the Secretary of State that the investigation of the complaint is sufficient in order to make a final determination of the complaint, the Secretary of State shall issue an order setting forth the findings, conclusions and remedies (if any) resulting from the complaint and shall mail a copy to the complainant and each known party by first class mail within 90 days of the complaint having been received by the Secretary of State.

(3) Complaints which are not resolved within 90 days from the date received by the Secretary of State shall be resolved through alternative dispute resolution within 150 days from the date the original complaint was filed with the Secretary of State. Complaints not resolved by alternative dispute resolution within 150 days from the date the original complaint was filed with the Secretary of State shall be treated as resolved against the complainant.

(4) Orders which dismiss the complaint upon a determination that there has not been a violation of Title III shall be published by the Office of the Secretary of State on its internet site at http://www.sos.state.al.us within seven days of receipt or issuance of the order by the Secretary of State.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-4-250(a); §§1 and 8 of Act 03-313; Attorney General Opinion No. 97-00109.

History: New Rule: Filed September 26, 2003; effective October 31, 2003.

820-2-5-.03 Remedies. If, under these procedures, the Secretary of State determines that there has been a violation of Title III, the order of the Secretary of State shall direct the appropriate remedy. See Sub-section 8 (5) of Act 03-313 of the State of Alabama and Section 402 (a)(2)(G) of the federal Help America Vote Act of 2002, Pub. L. 107-252.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-4-250(a); §§1 and 8 of Act 03-313; Attorney General Opinion No. 97-00109.

History: New Rule: Filed September 26, 2003; effective October 31, 2003.

Director's Office
PO Box 110017
Juneau, Alaska 99811-0017
907.465.4611 907.465.3203 FAX
elections@gov.state.ak.us

Regional Offices
Anchorage 907.522.8683
Fairbanks 907.451.2835
Juneau 907.465.3021
Nome 907.443.5285

STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

ADMINISTRATIVE COMPLAINT FILING PROCESS

Any person who believes that there is a violation of any provision of Title III of the Help America Vote Act of 2002, 42 U.S.C. §§ 15481-15485, including a violation that has occurred, is occurring, or is about to occur, may file a complaint.

Title III of the Help America Vote Act is available for viewing at the following web site:
http://www.gov.state.ak.us/ltgov/elections/hava.htm

The administrative complaint procedure is set out in Alaska Administrative Code, 6 AAC 25.400 - 6 AAC 25.490.

The Alaska Administrative code is available for viewing at the following web site:
http://old-www.legis.state.ak.us

HOW TO FILE A COMPLAINT

A complaint must be in writing. An Alaska Divisions of Elections Administrative Complaint form is available online at http://www.elections.state.ak.us/. Persons may also contact any of our Regional Offices to get a form, or call our statewide toll-free administrative complaint line: 1-888-465-5857.

The complaint must be:
a) signed by the complainant
b) notarized and sworn under oath by the complainant
c) and contain the following:
   (1) full name of the complainant;
   (2) mailing address of the complainant;
   (3) each provision of 42 U.S.C. 15481 - 15485 for which a violation is claimed;
   (4) and a description of the facts constituting the claimed violation.

The complaint must set out a clear and concise description of the claimed violation that is sufficiently detailed to apprise both the respondent(an election official whose actions are asserted), in a complaint under 6 AAC 25.400 - 6 AAC 25.490, to be in violation of 42 U.S.C. 15481 – 15485) and the director of the claimed violation.

A01I (Rev. 6/04)

WHERE TO FILE A COMPLAINT

The original complaint must be filed with the Director and mailed to:

Division of Elections
Director's Office
P.O. Box 110017
Juneau, Alaska
99811-0017

A written complaint must be filed with the director, along with:

1. adequate proof of mailing or delivery of a copy of the complaint to each respondent; or
2. a request for mailing or delivery by the Director of the Division of Elections to each respondent.

A complaint must be filed within 60 days after the:

1. occurrence of the actions or events that form the basis for the complaint, including any actions or events that form the basis for the complainant's belief that a violation is about to occur; or
2. complainant knew or, with the exercise of reasonable diligence, should have known of actions or events described in (1) of this subsection.

The Director will examine each complaint, and will reject it for filing if:

1. it is not signed and notarized under oath;
2. it does not identify the complainant or include an adequate mailing address;
3. it does not, on its face, allege a violation of 15 U.S.C. 15481 - 15485 with regard to a federal election; or
4. more than 90 days have elapsed since the final certification of the federal election at issue.

You may contact any of our State of Alaska Election Offices for further information:

Director's Office
PO Box 110017
Juneau, Alaska 99811-0017
907.465.4611 phone
907.465.3203 FAX

Regional Offices
Anchorage 907.522.8683
Fairbanks 907.451.2835
Juneau 907.465.3021
Nome 907.443.5285

Call our toll-free phone number: 1-888-465-5857

TTY call toll-free 1-888-622-3020

A01I (Rev. 6/04)

Article 2

Administrative Complaint Procedure for Violations of the Help America Vote Act of 2002

Section

6 AAC 25.400. Purpose and applicability (a) The purpose of 6 AAC 25.400 - 6 AAC 25.490 is to provide a uniform, nondiscriminatory procedure to the resolution of any complaint alleging a violation of 42 U.S.C. 15481 - 15485 (title III of the Help America Vote Act of 2002), including a violation that has occurred, is occurring, or is about to occur.
(b) The procedures set out in 6 AAC 25.400 - 6 AAC 25.490 do not apply to an election recount under AS 15.20.430 - 15.20.530, or to an election contest under AS 15.20.540 - 15.20.560. A complainant who wishes to challenge the validity of a primary, general, or special election, or to determine the validity of a ballot or vote must seek relief as otherwise provided by law.
Eff. 8/29/2003, Register 167

Authority: AS 15.05.010

6 AAC 25.410. Who may file A person who believes that a violation of 42 U.S.C. 15481 - 15485 has occurred, is occurring, or is about to occur may file a complaint. Eff. 8/29/2003, Register 167

Authority: AS 15.15.010

6 AAC 25.420. Form of complaint (a) A complaint must be in writing. The complaint must contain the following information, in a statement that is notarized, signed by the complainant, and sworn under oath by the complainant:
(1) the name of the complainant;
(2) the mailing address of the complainant,
(3) each provision of 42 U.S.C. 15481 - 15485 for which a violation is claimed;
(4) a description of the facts constituting the claimed violation.
(b) The complaint must set out a clear and concise description of the claimed violation that is sufficiently detailed to apprise both the respondent and the director of the claimed violation.
(c) The complainant may file a complaint using a form provided by the division, or using another form that satisfies the requirements of (a) - (b) of this section.
Eff. 8/29/2003, Register 167

Authority: AS 15.15.010

Editor's note: A copy of 42 U.S.C. 15481 - 15485, and a complaint form as described in 6 AAC 25.410(b) , may be obtained from an office of the Division of Elections, or by requesting the items from the Division of Elections, P.O. Box 110017, Juneau AK 99811-0017, telephone (907) 465-4611, fax (907) 465-3203, TTY (907) 465-3020. A complaint form may also be printed or downloaded from the Division of Elections Internet web site, www.elections.state.ak.us.

6 AAC 25.430. Place and time for filing; copy for respondent. (a) A complaint must be filed with the director, along with
(1) adequate proof of mailing or delivery of a copy of the complaint to each respondent; or
(2) a request for mailing or delivery under (c) of this section.
(b) A complaint must be filed within 60 days after the
(1) occurrence of the actions or events that form the basis for the complaint, including any actions or events that form the basis for the complainant's belief that a violation is about to occur, or
(2) complainant knew or, with the exercise of reasonable diligence, should have known of actions or events described in (1) of this subsection.
(c) The complainant must mail or deliver a copy of the complaint to each respondent, or request that the director mail or deliver a copy to each respondent.
(d) The director will examine each complaint, and will reject it for filing if
(1) it is not signed and notarized under oath;
(2) it does not identify the complainant or include an adequate mailing address;
(3) it does not, on its face, allege a violation of 15 U.S.C. 15481 - 15485 with regard to a federal election; or
(4) more than 90 days have elapsed since the final certification of the federal election at issue. Eff. 8/29/2003, Register 167

Authority: AS 15.15.010

6 AAC 25.440. Processing of complaint (a) To review a complaint that is filed without a request for hearing under 6 AAC 25.450(a) , or to hear a complaint for which a hearing has been requested, the director will, if the director has not been directly involved in the actions or events that are the subject of the complaint,
(1) review or hear the complaint personally, and make a final determination on the complaint;
(2) designate an employee of the division to review or hear the complaint, and to prepare a proposed determination for the director's consideration; or

(3) appoint a hearing officer from outside the division to review or hear the complaint, and to prepare a proposed determination for the director's consideration.
(b) A designee of the director or hearing officer under (a) of this section may not be, and may not have been, directly involved in the actions or events that are the subject of the complaint, and may not directly supervise or be directly supervised by any respondent.
(c) If the director has been directly involved in the actions or events that are the subject of the complaint, the director will refer the complaint, for resolution under 6 AAC 25.400 - 6 AAC 25.490, to the director of the office of management and budget within the office of the governor, or to a member of office of management and budget designated by the director of the office of management and budget.
(d) The director, director's designee, or hearing officer may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.
(e) The director will, or the director's designee or a hearing officer shall, allow a complainant to proceed with the assistance of an English language or American Sign Language interpreter if the complainant is unable to proceed without assistance of an interpreter. A complainant who needs an interpreter is responsible for securing and paying for the services of the interpreter, except to the extent that federal law requires that the state be responsible for payment for interpreter services.
(f) The director will, or the director's designee or a hearing officer shall, in coordination with the parties, establish a schedule under which the complainant and respondent may file written submissions concerning the complaint and under which the complaint will be finally determined.
(g) The director will, or the director's designee or a hearing officer shall, compile and maintain an official record in connection with each complaint under 6 AAC 25.400 - 6 AAC 25.490, including the following materials:
(1) a copy of the complaint, including any amendments made with the permission of the director;
(2) a copy of any written submission by the complainant;
(3) a copy of any written response by any respondent or other interested person;
(4) a written report of any investigation conducted by employees of the division; those employees may not be, and may not have been, directly involved in the actions or events that are the subject of the complaint, and may not directly supervise or be directly supervised by any respondent;
(5) copies of all notices and correspondence to or from the director in connection with the complaint;
(6) originals or copies of any tangible evidence produced at any hearing conducted under 6 AAC 25.450;
(7) the original tape or electronic recording produced at any hearing conducted under 6 AAC 25.450, and a copy of any transcript obtained or filed, subject to 6 AAC 25.450(f), for inclusion in the record; and
(8) a copy of any final determination made under 6 AAC 25.460 or 6 AAC 25.470. Eff. 8/29/2003, Register 167

Authority: AS 15.15.010

6 AAC 25.450. Hearing (a) At the request of the complainant, a hearing on the record will be conducted.
(b) The hearing will be conducted no later than 30 days after the director receives the complaint. At least 10 working days before the date of the hearing, the division will give notice of the date, time, and place of the hearing
(1) by mail, to the complainant, each named respondent, and any other interested person who has asked in writing to be advised of the hearing;
(2) on the division's Internet web site; and
(3) by posting in a prominent place, available to the general public, at the offices of the division.
(c) The complainant, any respondent, or any other interested person may appear at the hearing and testify or present tangible evidence in connection with the complaint. Each witness must be sworn. An interested person who is unable to appear at the hearing in person may present testimony by telephone or through a written statement, subject to the requirements of this subsection. The time for and content of testimony may be limited to ensure that all interested participants are able to present their views, to exclude irrelevant or repetitious testimony, and to ensure compliance with the time limits under 6 AAC 25.460 - 6 AAC 25.470 for a final determination. The hearing may be recessed and reconvened at a later date, time, and place announced publicly at the hearing.
(d) An attorney may represent a complainant or other person who testifies or presents evidence at the hearing.
(e) Cross-examination will be allowed, and a person may testify or present evidence to rebut any other testimony or evidence. The time for and content of cross-examination and rebuttal testimony may be limited to ensure that all interested participants are able to present their views, to exclude irrelevant or repetitious testimony, and to ensure compliance with the time limits under 6 AAC 25.460 - 6 AAC 25.470 for a final determination.
(f) At its own expense, the division will record the proceedings by tape or other electronic means. At its own expense, the division or any party may arrange to have a transcript prepared of the recording. Any transcript that the division obtains is part of the official record. If a party arranges for preparation of a transcript, the party must file it in order for the transcript to be included as part of the official record. A party or interested person may examine a transcript that is included as part of the official record.
(g) A party may file a written brief or memorandum within five working days after the conclusion of the hearing. Responsive or reply memoranda will not be accepted, except with specific authorization as the director, director's designee, or hearing officer determines necessary to make a determination on the complaint. Eff. 8/29/2003, Register 167

Authority: AS 15.15.010

6 AAC 25.460. Final determination (a) If the complainant has not requested a hearing under 6 AAC 25.450, the director will review the record and determine whether, under a preponderance of the evidence standard, a violation of 42 U.S.C. 15481 - 15485 has been established. If a division employee has been designated or hearing officer has been appointed under 6 AAC 25.440(a) (2) or (a)(3), that person shall review the record and prepare a proposed determination as to whether a violation of 42 U.S.C. 15481 - 15485 has been established, based upon a preponderance of the evidence standard. After review of the record, the director will adopt the proposed determination as the final determination, adopt the proposed determination with modifications as the final determination, or reject the proposed determination.
(b) After any hearing conducted under 6 AAC 25.450, and after the submission under 6 AAC 25.450(g) of any written briefs or memoranda, the director will determine under a preponderance of the evidence standard whether a violation of 42 U.S.C. 15481 - 15485 has been established. If a division employee has been designated or hearing officer has been appointed under 6 AAC 25.440(a) (2) or (a)(3), that person shall review the record and prepare a proposed determination as to whether a violation of 42 U.S.C. 15481 - 15485 has been established, based upon a preponderance of the evidence standard. After review of the record, the director will adopt the proposed determination as the final determination, adopt the proposed determination with modifications as the final determination, or reject the proposed determination.
(c) For any violation established under this section, the director will provide a remedy directed to the improvement of procedures that are subject to 42 U.S.C. 15481 - 15485. As part of the remedy, the director may include an order requiring any respondent to take specified action, or prohibiting any respondent from taking specified action, with respect to a past or future election. However, the director will not award money damages, attorney fees, or costs as part of a remedy.
(d) If the complaint is not timely, or if the director determines that a violation has not occurred or that the evidence is insufficient to establish a violation, the director will dismiss the complaint.
(e) The director will explain in a written decision the reasons for a determination and for any remedy selected.
(f) Except as specified in 6 AAC 25.470, a final determination under (a) or (b) of this section will be issued within 90 days after the complaint was filed, unless the complainant consents in writing to an extension. However, if a hearing officer is appointed under 6 AAC 25.440(a) (3), the hearing officer shall present a proposed determination to the director within 120 days after the complaint was filed, and the director will issue a final determination within 150 days after the complaint was filed. The final determination will be mailed to the complainant, each respondent, and any other interested person who has asked in writing to be advised of the final determination. It will also be posted on the division's Internet web site and made available on request to any interested person.
(g) Except as described in (f) of this section, if a final determination under (a) or (b) of this section is not or cannot be made within 90 days after the complaint was filed, or within any extension to which the complainant consents, the complaint will be referred for final resolution under 6 AAC 25.470. The record compiled under 6 AAC 25.440(c) will be made available for use under 6 AAC 25.470.
(h) The final determination under (a) or (b) of this section constitutes the final decision of an administrative agency under AS 22.10.020 (d), for which review may be sought under the Alaska Rules of Appellate Procedure. Eff. 8/29/2003, Register 167

Authority: AS 15.15.010

6 AAC 25.470. Alternative dispute resolution through a hearing officer (a) If a hearing officer has not already been appointed under 6 AAC 25.440(a) (3), and if the director has not made a final determination within 90 days after the complaint was filed, or within any extension to which the complainant consents under 6 AAC 25.460(f), the director will appoint a hearing officer from outside the division to review or hear the complaint, and to prepare a proposed determination for the director's consideration. The hearing officer may not be, and may not have been, directly involved in the actions or events that are the subject of the complaint.
(b) The hearing officer shall review the record compiled in connection with the complaint, including the tape or electronic recording of any hearing, any transcript of a hearing, and any briefs or memoranda. As necessary to prepare a proposed determination, the hearing officer may request that the parties present additional briefs or memoranda.
(c) After review of the record and any additional briefs or memoranda requested under (b) of this section, the hearing officer shall prepare a proposed determination as to whether a violation of 42 U.S.C. 15481 - 15485 has been established, based upon a preponderance of the evidence standard. The hearing officer shall present the proposed determination to the director within 120 days after the complaint was filed. After review of the record, the director will adopt the proposed determination as the final determination, adopt the proposed determination with modifications as the final determination, or reject the proposed determination. The director will issue a final determination within 150 days after the complaint was filed. The final

determination will be mailed to the complainant, each respondent, and any other interested person who has asked in writing to be advised of the final determination. It will also be posted on the division's Internet web site and made available on request to any interested person.
(d) The final determination under (c) of this section constitutes the final decision of an administrative agency under AS 22.10.020 (d), for which review may be sought under the Alaska Rules of Appellate Procedure. Eff 8/29/2003, Register 167

Authority: AS 15.15.010

6 AAC 25.490. Definitions

In 6 AAC 25.400 - 6 AAC 25.490, unless the context requires otherwise,
(1) "complainant" means a person who files a complaint with the director under 6 AAC 25.400 - 6 AAC 25.490;
(2) "respondent" means an election official whose actions are asserted, in a complaint under 6 AAC 25.400 - 6 AAC 25.490, to be in violation of 42 U.S.C. 15481 - 15485;
(3) "working day" means a day other than Saturday, Sunday, or a state holiday. Eff 8/29/2003, Register 167

Authority: AS 15.15.010

Director's Office
PO Box 110017
Juneau, Alaska 99811-0017
Phone: 907-465-4611
Fax: 907-465-3203

STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

For Office Use Only Date received in Director's Office: Complaint #

ADMINISTRATIVE COMPLAINT FORM

This form may be used by any person alleging a violation of Title III of the Help America Vote Act of 2002,42 U.S.C. § 15481-15485 that has occurred, is occurring, or is about to occur.

PLEASE CLEARLY PRINT OR TYPE ALL INFORMATION

Complainant (person alleging violation of Title III)

Name of Complainant: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Daytime Phone Number: _____ Fax Number: _____

E-mail Address: _____

Respondent(s) (person(s) alleged in claim to have committed violation of Title III)

Name of Respondent: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Daytime Phone Number: _____ Fax Number _____

E-mail Address: _____

Community name and precinct location of alleged violation(s): _____

Polling place location of alleged violation(s): _____

Date(s) of alleged violation(s): _____

Please explain the basis for your complaint, including each provision of 42 U.S.C. § 15481-15485 in which a violation is being alleged. Include names and addresses of any witnesses to alleged violation(s). Please attach separate sheet(s).

ADMINISTRATIVE COMPLAINT FORM

State in your own words the detailed facts that form the basis of your complaint, including names of any relevant person(s). In your narrative explanation, please include specific dates, times, as well as any reasons you believe the alleged violation(s) were knowingly committed by the person(s) against whom this complaint is brought. Please attach separate sheet(s).

Would you like to request a hearing on the record? ☐ Yes ☐ No

I have mailed or delivered a copy to named respondent(s) in complaint: ☐ Yes ☐ No
OR
I request the Director of Elections to mail or deliver a copy to each named respondent in complaint:

☐ Yes ☐ No

State of Alaska

City: _____

I, the undersigned, under penalty of perjury, do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge:

_____ _____
Printed Name of Complainant Signature of Complainant

SUBSCRIBED AND SWORN TO before me on this ____ day of _____, 20____.

_____
Notary Public in and for the
_____

NOTARY SEAL

My commission expires: _____

Mail the original signed and notarized Administrative Complaint to:
Director
Division of Elections
PO Box 110017
Juneau, Alaska 99811-0017

NOTICE: This complaint is not confidential, and once filed with the Director's Office, shall be treated as public record.

A01 (Rev. 6/04)

State Of Arizona Grievance Process

HELP AMERICA VOTE ACT OF 2002, TITLE IV, SECTION 402

SECTION 1. SCOPE.

The secretary of state has a statewide complaint system to address complaints involving a violation of any provision of Title III of the Help America Vote Act of 2002 (HAVA) [42 U.S.C. §§15481-15485]. The statewide system will provide secure online access and phone call center access for complaint processing to the secretary of state or a designee. The system also provides secure online review of the complaint by the submitter. Upon receiving the formal complaint in the secretary of state's office either by mail or hand delivery, the secretary of state's office shall begin the resolution process.

Under this process any person may file a complaint who believes that there has been a violation, a violation is occurring, or a violation will be occurring related to any provision of Title III of HAVA. These procedures shall be uniform and non-discriminatory. If under these procedures the secretary of state determines that there is a HAVA Title III Violation, an appropriate remedy shall be provided to the extent permitted by law. If the secretary of state determines that the complaint does not allege a HAVA Title III Violation, the secretary of state may dismiss the complaint or refer it to the proper agency for resolution.

SECTION 2. DEFINITIONS.

1) "Complainant" means any person who files a complaint with the secretary of state under the State of Arizona Grievance Process.

2) "HAVA Title III Violation" means an act contrary to a party's statutory rights regarding voting system standards, provisional voting procedures, voter registration procedures, and operational standards of the statewide voter registration system as found in A.R.S. § 16-168(K) and Title III of HAVA. It does not mean non-Title III election law matters, including a candidate's ballot access or campaign finance matters.

3) "Person" means any individual residing in the State of Arizona at the time the complaint is filed.

4) "Respondent" means any person or entity, who is named in a complaint under these provisions, and is alleged to have violated, is violating, or is about to violate any provision of Title III of HAVA.

5) "Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code §§ 15481-15485.

SECTION 3. FORM OF COMPLAINT.

1) A complaint filed under this procedure shall be in writing, notarized, signed and sworn to. A standardized form for the complaint is available by any of the following methods: on the secretary of state's web site at www.azsos.gov, from the election official in the complainant's county of residence, or it can be mailed at the request of the complainant. The form provided by the secretary of state is available in both English and Spanish and is accessible to persons with disabilities.

2) The complainant may use any other written document to submit the complaint provided that it satisfies the requirements of subsection 1 and includes a description of the alleged violation which has occurred, is occurring, or is about to occur and indicates whether a hearing is requested.

SECTION 4. INSTRUCTIONS FOR FILING.

1) Where to File. The complaint may be filed in person or by mail at the Arizona Secretary of State's Office, 1700 West Washington, 7th Floor, Phoenix, Arizona 85007, or 400 West Congress, 2nd Floor, Room 252, Tucson, Arizona 85701. Forms cannot be accepted by e-mail or facsimile.

2) When to File. Any person may file a complaint who believes that there has been a violation, a violation is occurring, or a violation will be occurring related to any provision of Title III of HAVA. A complaint may be filed up to but no more than 60 days following the occurrence of the alleged violation of Title III.

SECTION 5. PROCESSING OF COMPLAINT.

1) Consolidation. In the event the complaint raises common questions of law and fact to other pending complaints, the secretary of state may consolidate the complaints and notify the complainants of the changed status.

2) Notice to Respondents. Within 5 business days of receiving a complaint in the secretary of state's office, the secretary of state shall notify all respondents of the allegations made in the complaint. This subsection shall not apply if the secretary of state has reason to believe that notifying a respondent or respondents of the complaint filed might compromise a criminal investigation or prosecution or other enforcement action by any local, state or federal agency.

SECTION 6. HEARING.

1) Within 5 business days of receiving a complaint in the secretary of state's office that requests a hearing, the secretary of state shall notify the Office of Administrative Hearings in accordance with Arizona Administrative Code (A.A.C.) R2-19-103 to schedule a hearing.

2) The hearing shall be conducted no sooner than 10 days and no later than 60 days after the secretary of state receives the complaint in the secretary of state's office.

3) The hearing shall be conducted in accordance with the procedures set forth in Title 41, Chapter 6, Article 9 and the Arizona Administrative Code, Chapter 19, Article 1.

4) The complainant shall bear the burden of persuasion.

5) The administrative law judge decision issued pursuant to A.R.S. § 41-1092.08(A) shall include an appropriate remedy if an appropriate remedy is available. Such remedy shall be consistent with the provisions of Section 9.

SECTION 7. FINAL DETERMINATION.

The secretary of state or the secretary of state's designee may accept, reject or modify the decision of the administrative law judge pursuant to A.R.S. § 41-1092.08(D) and such action shall constitute the final determination with respect to the complaint. The secretary of state shall give notice to all parties involved of this determination. The final determination shall be made within 90 days of the filing of the complaint with the secretary of state unless the complainant consents to a longer period.

SECTION 8. ALTERNATIVE DISPUTE RESOLUTION.

1) If the secretary of state or the secretary of state's designee fails to meet the deadline set forth in section 7, the complaint shall be resolved within 60 days under the alternative dispute resolution procedures established by this section.

2) On or before the 5th business day after a final determination was due, the secretary of state shall designate in writing an administrative law judge who shall be a neutral party not associated with the complainant or any respondent.

3) The administrative law judge may review the record compiled in connection with the complaint, but need not receive additional testimony or evidence. The administrative law judge may request that the parties present additional briefs, memoranda or oral testimony.

4) Subject to the provisions of Section 9, the administrative law judge shall determine the appropriate remedy for the complaint to the extent provided by law.

5) The administrative law judge must issue a written resolution within 60 days after the secretary of state's final determination was due under Section 7. This 60-day period may not be extended without the express written consent of the complainant. The final resolution shall be transmitted by the administrative law judge to the secretary of state and shall be the final resolution of the complaint. The secretary of state shall mail the final resolution to the complainant, each respondent, and any other interested person who has asked in writing to be advised of the final resolution. It shall also be published on the secretary of state website and made available on request to any interested person. However, no mailing, publication or other providing of the determination or remedy shall be required if the secretary of state has reason to believe that such mailing, publication or providing might compromise a criminal investigation or prosecution or other enforcement action by any local, state or federal agency.

SECTION 9. REMEDIES.

No remedy may involve the awarding of compensatory or punitive monetary damages to a complainant or a finding that an election official is subject to civil penalties. An appropriate remedy may include, but is not limited to any or all of the following:

a. a plan for rectifying the particular violation;

b. an order requiring that additional training will be provided to election officials so as to ensure compliance with Title III and the Arizona Revised Statutes, Title 16; and

c. an order requiring additional voter education.

State of Arizona

Election Grievance Form

JANICE K. BREWER, SECRETARY OF STATE
Election Services Division, 1700 W. Washington, 7th Fl., Phoenix, Arizona 85007

Secretary of State Use Only
Do not write or staple in this space

This form is to be used by anyone alleging a violation of Title III of the Help America Vote Act (HAVA) of 2002, 42 U.S.C. §§ 15481-15485.

TYPE or PRINT ALL INFORMATION.
Please fill out this form completely, have it notarized and return it to the address above.
For more information, call Toll-free (in-state) 1-877-THE VOTE (1-877-843-8683); or 602-542-8683. TDD # 602-255-8683.
Visit www.azsos.gov for more information about HAVA and the State of Arizona HAVA Plan.

Personal Information			
Last Name	First Name		
Mailing Address (include apartment # if applicable)	City	State	Zip Code
Daytime Phone Number (include area code)	Fax Number (include area code)		
E-mail address			

Federal Law Violations Under HAVA individuals may file a complaint if a violation: has occurred; is occurring; or is about to occur.

Date of alleged violation	Place of alleged violation		
Provisional Ballot ☐ I was not allowed to vote using a provisional ballot	***New Voter Registration*** ☐ Provisions regarding verification of new voter registration were not followed	***Provisional Ballot Not Counted*** ☐ I was not able to determine whether my provisional ballot was counted	***Posting Voter Information*** ☐ Required voting information was not publicly posted in a polling place on Election Day
Other federal law violation ☐ If other violation, fill out information to the right.	Section of Title III of the Help America Vote Act of 2002 allegedly violated.		
	Describe Violation Here:		
☐ Would you like the Office of Administrative Hearings to conduct a hearing on the record?			
Signature of complainant			

State of Arizona)
County of _____)

(seal)

Subscribed and sworn (or affirmed) before me this _____ day of _____, _____.

_____
Notary Public

Grievance Form Rev. 072304

RULES
FOR
HELP AMERICA VOTE ACT
ADMINISTRATIVE COMPLAINT
PROCEDURE

State Board of Election Commissioners
501 Woodlane, Suite 122
Little Rock, AR 72201
(800) 411-6996

TABLE OF CONTENTS

Scope of Rules

These rules set forth the procedures for providing uniform and nondiscriminatory resolution of any complaint alleging a violation of any provision of Title III of the Help America Vote Act of 2002, including a violation that has occurred, is occurring, or is about to occur.

§ 400 Definitions

a) "Complainant" means any person who believes that a violation of any provision of Title III has occurred, is occurring, or is about to occur who files a complaint with the State Board of Election Commissioners, hereinafter referred to as the "State Board."

b) "Respondent" means any State or local election official whose actions are asserted, in a complaint filed with the State Board, to be in violation of Title III.

c) "Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, and 116 Stat. 1666 (2002), codified at 42 United States Code §§15481-15485.

§401 Who May File

Any person who believes that a violation of any provision of Title III has occurred, is occurring, or is about to occur may file a complaint.

§ 402 Form of Complaint

A complaint shall be in writing, notarized, signed, and sworn by the Complainant.

§ 403 Filing a Complaint

A. Place for Filing.

A complaint shall be filed with the State Board.

B. Time for Filing.

A complaint shall be filed within thirty (30) days after the occurrence of the actions or events that form the basis for the complaint, including the actions or events that form the basis for the Complainant's belief that a violation is about to occur, or, if later, within thirty (30) days after the Complainant knew or, with the exercise of reasonable diligence, should have known of those actions or events.

C. Copy for Respondent.

The Complainant shall mail or deliver a copy of the complaint to each Respondent.

§ 404 Processing a Complaint

A. Consolidation.

The State Board may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.

B. Record.

(1) The State Board shall compile and maintain an official record in connection with each complaint filed in accordance with §§ 402 and 403 of this rule.

(2) The official record shall contain:

a) A copy of the complaint, including any amendments made with the permission of the State Board;

b) A copy of any written submission by the Complainant;

c) A copy of any written response by any Respondent or other interested person;

d) A written report of any investigation conducted by members or employees of the State Board or of any local board of election commissioners, who may not be directly involved in the actions or events complained of and may not directly supervise or be directly supervised by any Respondent;

e) Copies of all notices and correspondence to or from the State Board in connection with the complaint;

f) Originals or copies of any tangible evidence produced at any hearing conducted under § C of this rule;

g) The original tape recording produced at any hearing conducted under § C of this rule, and a copy of any transcript obtained by the State Board, any local board of election commissioners, or other party; and

h) A copy of any final determination made by the State Board under § D or § E of this rule.

C. Hearing

(1) At the request of the Complainant, there shall be a hearing on the record.

(2) The Complainant must submit within thirty (30) days of filing the complaint, a written request for a hearing.

(3) The hearing shall be conducted no later than sixty (60) days after the State Board receives the complaint.

(4) The Director of the State Board shall give at least five (5) business days' advance notice of the date, time, and place of the hearing:

a) By mail to the Complainant, each named Respondent, and any other interested person who has asked in writing to be advised of the hearing;

b) By posting in a prominent place, available to the general public, at the office of the State Board.

(5) The Director of the State Board or the Director's designee shall act as hearing officer.

(6) The Complainant, any Respondent, or any other interested member of the public may appear at the hearing and testify or present tangible evidence in connection with the complaint.

a) Each witness shall be sworn.

b) The hearing officer may limit the testimony, if necessary, to ensure that all interested participants are able to present their views.

c) The hearing officer may recess the hearing and reconvene at a later date, time, and place announced publicly at the hearing.

(7) A Complainant, Respondent, or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.

(8) There shall be no right of cross-examination.

a) A person may testify or present evidence to contradict any other testimony or evidence.

b) If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence subsequently presented, that person is not entitled to be heard again, but may make a written presentation to the hearing officer.

(9) The proceedings shall be tape-recorded by the Director of the State Board.

a) The recording shall not be transcribed as a matter of course, but the State Board, a local board of election commissioners, or any party may obtain a transcript at its own expense.

b) If a local board of election commissioners or other party obtains a transcript, the board or party shall file a copy as part of the record, and any other interested person may examine the record copy.

(10) Any party to the proceedings may file a written brief or memorandum within five (5) business days after the conclusion of the hearing. No responsive or reply memoranda will be accepted, except with the specific authorization of the hearing officer.

D. Final Determination

(1) If the complaint is not filed timely or in proper form, the State Board, acting through the Director or the Director's designee, shall dismiss the complaint.

(2) If there has been no hearing under § C of this rule, the Director of the State Board or the Director's designee shall review the record and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established. The determination of the Director or the Director's designee shall be the determination of the State Board.

(3) At the conclusion of any hearing under § C of this rule, the hearing officer shall determine, under a preponderance of the evidence standard, whether a violation of Title III has been established. The determination of the hearing officer shall be the determination of the State Board.

(4) If the Director of the State Board or the Director's designee, whether acting as hearing officer or otherwise, determines that a violation has occurred, the State Board, acting through the Director or Director's designee, shall provide the appropriate remedy.

a) The remedy may include, but is not limited to, a determination directing the Respondent to take specified action with respect to a past or future election.

b) The remedy may not include an award of money damages or attorney's fees.

(5) If the Director of the State Board or the Director's designee, whether acting as hearing officer or otherwise, determines that a violation has not occurred or that there is insufficient evidence to establish a violation, the State Board, acting through the Director or Director's designee, shall dismiss the complaint.

(6) The Director of the State Board or the Director's designee shall explain in a written decision the reasons for the determination and for any remedy selected.

(7) Either the Complainant or the Respondent may appeal the decision of the Director of the State Board or the Director's designee by submitting a written request to the Director within three (3) days of receipt of the decision. The members of the State Board may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but shall not receive additional testimony or evidence. In exceptional cases, the State Board may request that the parties present additional briefs or memoranda. The State Board shall issue a written decision affirming, reversing, or modifying the decision being appealed within five (5) days of the State Board's review.

(8) Except as specified in subsection (9) of this section, the final determination shall be issued within ninety (90) days after the complaint was filed, unless the Complainant consents in writing to an extension.

a) The final determination shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final determination.

b) The final determination shall be published on the State Board's website and made available on request to any interested person.

(9) If a final determination is not made within ninety (90) days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be referred for final resolution under § E of this rule. The record compiled under § B of this rule shall be made available for use under § E of this rule.

E. Alternate Dispute Resolution

If, for any reason, the Director of the State Board or the Director's designee does not render a final determination within ninety (90) days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be resolved under this section.

(1) On or before the fifth business day after a final State Board determination was due, the State Board shall designate in writing to the Complainant the name of an arbitrator to serve on a panel to resolve the complaint.

a) Within three (3) business days after the Complainant receives this designation, the Complainant shall designate in writing to the State Board the name of a second arbitrator.

b) Within three (3) business days after the Complainant's designation, the two (2) arbitrators so designated shall select a third arbitrator to complete the panel.

(2) The arbitrator shall be selected from the certified list published by the Arkansas Alternative Dispute Resolution Commission.

(3) The arbitration panel may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but shall not receive additional testimony or evidence. In exceptional cases, the panel may request that the parties present additional briefs or memoranda.

(4) The arbitrators shall determine the appropriate resolution of the complaint by a majority vote.

(5) The arbitration panel must issue a written resolution within sixty (60) days after the final State Board determination was due under § D of this rule.

a) This sixty (60) day period may not be extended.

b) The final resolution of the panel shall be transmitted to the State Board and shall be the final resolution of the complaint.

c) The final resolution shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final resolution.

d) The final resolution shall be published on the State Board's website and made available on request to any interested person.

Colorado

The Colorado Secretary of State developed and implemented a uniform, non-discriminatory administrative complaint system process required under the Help America Vote Act 42 U.S.C. 15301, sec.402 (2002)("HAVA") and as proposed in the State Plan published in the *Federal Register* in March 2004. This process was in place by January 1, 2004, and the State Plan as published in the *Federal Register* should be updated to reflect implementation of the originally proposed plan.

Colorado's administrative complaint process meets the following requirements:

- Procedures are uniform and nondiscriminatory;
- Any person who believes there is a violation of Title III may file a complaint;
- Complaints are to be in writing and notarized, signed and sworn by the person filing the complaint, and may be filed and resolved locally or with the Secretary of State;
- Complaints may be easily tracked by interested parties;
- The state may consolidate complaints;
- At complainant's request, there shall be a hearing on the record;
- The state shall provide an appropriate remedy if it finds a violation has occurred and publish the results;
- If no violation is found, the complaint shall be dismissed and the results published;
- Complaints shall have a final resolution within 90 days of the complaint being filed, unless the complainant consents to a longer period;
- If the complaint cannot be resolved within that period, an alternative dispute resolution procedure must be provided and resolved within 60 days;
- A determination may be appealed by the aggrieved party within 30 days, in state district court;
- Timelines for the filing and disposition/resolution of a complaint follow federal and state laws.

(See §1-1.5-105, 1 Colorado Revised Statutes (2003).)

Help America Vote Act, Title III: Administrative Complaint Procedures

Submission Process:

- The HAVA Title III complaint may be received by the Secretary of State's office or the designated election official's office.
  - Complaints must be filed within one year from the date of the alleged violation or the election, whichever is later.

- The complaint must be in writing and may be submitted on a form designated by the Secretary of State [form attached] or in a letter written by the complainant. The letter shall contain the following:

  a) The complainant's name;
  b) The complainant's full residence address, including county, and mailing address (if different from residence);
  c) A description of the violation alleged with particularity and a reference to the section of Title III of HAVA alleged to have been violated;
  d) A completed, notarized oath signed by the complainant where he or she states that the facts of the complaint are true and correct to the best of his or her knowledge and belief.

- Whenever possible, any completed complaints mailed to the Secretary of State or the designated election official shall be sent in a unique, distinguishable envelope as approved by the Secretary of State. This unique envelope shall be given to the complainant at the same time as the complaint form and instructions.

- Upon receipt of the HAVA complaint, the Secretary of State or designated election official shall note the date received and assign a unique tracking number on the complaint form. The Secretary of State's office shall establish a unique tracking number for its use, and the designated election official shall use the Secretary of State's county ID number for that county, the last two digits of the present year, and a sequence number according to the amount of complaints already received by the county, placing hyphens between groupings of numbers. (For example, the first one received would be the two digit county number-last two digits of the year-03 with 01, 02, 03, etc. numbering any sequential complaints).

- If the complaint is received by the Secretary of State's office, the unique tracking number shall be added to the form and the form shall be faxed to the designated election official in the county where the alleged violation occurred. The complainant shall receive a copy of the submitted complaint with all check-in notations and tracking numbers included.

- If the complaint is received by the designated election official, the county tracking number shall be added to the form and the form shall be faxed to the Secretary of State's office within one business day. The complainant shall receive a copy of the submitted complaint with all check-in notations and tracking numbers included. The original complaint form shall be hand delivered or mailed to the Secretary of State's office, and a copy shall be retained by the designated election official.

- Any original mailed complaints sent by the designated election official and received by the Secretary of State's office shall be sent in a unique, distinguishable mailing envelope as approved by the Secretary of State. This unique envelope will ensure that the complaint is easily recognizable and will be processed in a timely manner.

- If the complaint is received by the designated election official and the original sent to the Secretary of State's office, the Secretary of State's office shall notify the designated election official, either by fax or letter, of the office's unique tracking number when the form is received at the Secretary of State's office. His official notification may be used for documentation purposes.

- The designated election official shall not make any determination as to the validity of the alleged complaint during the submission process, but shall forward all information to the Secretary of State's office. The county may, however, begin researching the alleged violation on the local level once the complaint is received.

- Any information gathered by the designated election official shall be documented with specific details, including the date, and shall be used for reference purposes.

Review Process:

Under the Review Process, the Secretary of State has several options available:

- Local Resolution
- Resolution/Remedy without a hearing
- Dismissal
- Consolidation
- Extension
- Hearing
- Determination
- Alternative Dispute Resolution (ADR)
  - This procedure is required if the Secretary of State does not issue a final determination concerning the complaint within 90 days.
  - An agreement has been made between the Colorado Judicial Office of Dispute Resolution and the Secretary of State to address these ADR requirements.

The Code of Colorado Regulations, 8CCR 1505-3, Rule 1, Declaratory Orders, have been modified and drafted into rules for the HAVA Administrative Complaint Procedure.

Appeal Process:

Within 30 days following the final determination by the Secretary of State, an aggrieved party may appeal the Secretary's determination to the District Court in and for the City and County of Denver.

For Clerical Use Only

Complaint # ___ ___ - ___ ___ - ___ ___ ___ ___

Date of Filing _____

COMPLAINT
For Alleged Violation of Title III of the
Help America Vote Act of 2002
(42 U.S.C. §15512)

Colorado Secretary of State, HAVA Division
1560 Broadway, Suite 200
Denver, Colorado 80202
Phone: 303.894.2200, ext. 6314
Fax: 303.869.4861

Pursuant to section 1-1.5-105, Colorado Revised Statutes, the Secretary of State has sole jurisdiction to adjudicate alleged violations of Title III of the Help America Vote Act of 2002 (HAVA). Any person who believes that a violation of Title III of HAVA has occurred, is occurring, or is about to occur may file a complaint. In order to initiate the complaint process, a sworn, written, signed and notarized complaint must be filed with the Secretary of State no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the complaint, whichever is later. The complaint must allege the violation with particularity, contain a reference to the section of HAVA alleged to have been violated, and the person or entity responsible for the violation.

PERSON BRINGING COMPLAINT

Name _____ Home Phone _____ Work Phone _____
Address _____ County _____
City _____ State _____ Zip Code _____

PERSON OR ENTITY AGAINST WHOM COMPLAINT IS BROUGHT (limit one person/entity per form)

Name _____ Home Phone _____ Work Phone _____
Address _____ County _____
City _____ State _____ Zip Code _____

VIOLATION:

If you believe that a violation of Title III of the Help America Vote Act of 2002 has occurred, is occurring or is about to occur, please state the specific acts committed by the person or entity named in this complaint along with a reference to section of HAVA alleged to have been violated: (If you need more space please attach a seperate sheet)

_____
_____
_____
_____
_____
_____
_____
_____

HAVA/Complaint/appvd/SOS/01/04 1

STATEMENT OF FACTS:

State in your own words the detailed facts and circumstances that form the basis of your complaint, including any relevant person(s). In your narrative explanation, please include relevant dates and times and the names and addresses of other persons whom you believe have knowledge of the facts. Also, give any reasons that you feel the alleged violation was committed by the person and/or entity against whom this complaint is brought.

Check here if additional pages are attached ☐

STATE OF COLORADO
COUNTY OF _____

I, the undersigned, under penalty of perjury, do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge.

_____
Signature of Complainant

Sworn to and subscribed before me this _____ day of _____, 20____.

_____
Signature of Officer Authorized to Administer Oaths or Notary Public

_____
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known_____ or Produced Identification_____
Type of Identification Produced_____

NOTICE: This Complaint is not confidential and, once filed with the Department of State, will be treated as a public record.

Connecticut

House Bill No. 5500

Public Act No. 04-74

AN ACT CONCERNING COMPLIANCE WITH THE FEDERAL HELP AMERICA VOTE ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 9-323 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Any elector or candidate who claims that he is aggrieved by any ruling of any election official in connection with any election for presidential electors and for a senator in Congress and for representative in Congress or any of them, held in his town, or that there was a mistake in the count of the votes cast at such election for candidates for such electors, senator in Congress and representative in Congress, or any of them, at any voting district in his town, or any candidate for such an office who claims that he is aggrieved by a violation of any provision of sections 9-355, 9-357 to 9-361, inclusive, as amended, 9-364, 9-364a or 9-365 in the casting of absentee ballots at such election, may bring his complaint to any judge of the Supreme Court, in which he shall set out the claimed errors of such election official, the claimed errors in the count or the claimed violations of said sections. In any action brought pursuant to the provisions of this section, the complainant shall send a copy of the complaint by first-class mail, or deliver a copy of the complaint by hand, to the State Elections Enforcement Commission. If such complaint is made prior to such election, such judge shall proceed expeditiously to render judgment on the complaint and shall cause notice of the hearing to be given to the Secretary of the State and the State Elections Enforcement Commission. If such complaint is made subsequent to the election, it shall be brought within fourteen days of the election and such judge shall forthwith order a hearing to be had upon such complaint, upon a day not more than five nor less than three days from the making of such order, and shall cause notice of not less than three nor more than five days to be given to any candidate or candidates whose election may be affected by the decision upon such hearing, to such election official, to the Secretary of the State, to the State Elections Enforcement Commission and to any other party or parties whom such judge deems proper parties thereto, of the time and place for the hearing upon such complaint. Such judge, with two other judges of the Supreme Court to be designated by the Chief Court Administrator, shall, on the day fixed for such hearing and without unnecessary delay, proceed to hear the parties. If sufficient reason is shown, such judges may order any voting machines to be unlocked or any ballot boxes to be opened and a recount of the votes cast, including absentee ballots, to be made. Such judges shall thereupon, in the case they, or any two of them, find any error in the rulings of the election official, any mistake in the count of such votes or any violation of said sections, certify the result of their finding or decision, or the finding or decision of a majority of them, to the Secretary of the State before the first Monday after the second Wednesday in December. Such judges may order a new election or a change in the existing election schedule, provided such order complies with Section 302 of the Help America Vote Act, P.L. 107-252, as amended from time to time. Such certificate of such judges, or a majority of them, shall be final upon all questions relating to the rulings of such election officials, to the correctness of such count and, for the purposes of this section only, such claimed violations, and shall operate to correct the returns of the moderators or presiding officers so as to conform to such finding or decision.

Sec. 2. Section 88 of public act 03-6 of the June 30 special session is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Immediately after the close of the polls, the moderator shall seal the provisional ballot depository envelope and deliver such envelope to the registrars of voters of the town. The registrars of voters shall forthwith verify the information contained with each provisional ballot. If the registrars of voters determine that the applicant is eligible to vote, they shall note their decision on the outer envelope of the ballot and open and count the provisional ballot in accordance with the provisions of sections [55 to 61] 83 to 89, inclusive of [this act] public act 03-6 of the June 30 special session* and procedures prescribed by the Secretary of the State. If the registrars of voters are unable to determine that the applicant is eligible to vote or determine that the applicant is not eligible to vote, the applicant's provisional ballot sealed envelope shall be marked "rejected", along with the reason for such rejection, and signed by the registrars of voters. The registrars of voters shall verify and count all provisional ballots in their town not later than six days after the election or primary. The registrars of voters shall forthwith prepare and sign in duplicate a report showing the number of provisional ballots received from electors, the number rejected and the number counted, and showing the additional votes counted for each candidate for federal

office on the provisional ballots. The registrars of voters shall file one report with the town clerk and shall seal one in the depository envelope with the provisional ballots and file such depository envelope with the town clerk. The depository envelope shall be preserved by the town clerk for the period of time required to preserve counted absentee ballots for federal elections. The head moderator shall forthwith file a corrected return for federal offices with the town clerk and the Secretary showing (1) the final votes after any recanvass, pursuant to sections 9-311 to 9-311b, inclusive, the votes on provisional ballots and the totals, and (2) the number of provisional ballots received from electors, the number rejected and the number counted, as reported by the registrars of voters.

Sec. 3. Subsection (a) of section 9-261 of the general statutes, as amended by section 101 of public act 03-6 of the June 30 special session, is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section [91] 90 of [this act] public act 03-6 of the June 30 special session, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate.

Sec. 4. Section 9-7b of the general statutes, as amended by section 2 of public act 03-223 and sections 53 and 65 of public act 03-241, is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The State Elections Enforcement Commission shall have the following duties and powers:

(1) To make investigations on its own initiative or with respect to statements filed with the commission by the Secretary of the State or any town clerk, or upon written complaint under oath by any individual, with respect to alleged violations of any provision of the general statutes relating to any election or referendum, any primary held pursuant to section 9-423, as amended, 9-425 or 9-464 or any primary held pursuant to a special act, and to hold hearings when the commission deems necessary to investigate violations of any provisions of the general statutes relating to any such election, primary or referendum, and for the purpose of such hearings the commission may administer oaths, examine witnesses and receive oral and documentary evidence, and shall have the power to subpoena witnesses under procedural rules the commission shall adopt, to compel their attendance and to require the production for examination of any books and papers which the commission deems relevant to any matter under investigation or in question. In connection with its investigation of any alleged violation of any provision of chapter 145, or of any provision of section 9-359 or section 9-359a, the commission shall also have the power to subpoena any municipal clerk and to require the production for examination of any absentee ballot, inner and outer envelope from which any such ballot has been removed, depository envelope containing any such ballot or inner or outer envelope as provided in sections 9-150a, as amended, and 9-150b and any other record, form or document as provided in section 9-150b, in connection with the election, primary or referendum to which the investigation relates. In case of a refusal to comply with any subpoena issued pursuant to this subsection or to testify with respect to any matter upon which that person may be lawfully interrogated, the superior court for the judicial district of Hartford, on application of the commission, may issue an order requiring such person to comply with such subpoena and to testify; failure to obey any such order of the court may be punished by the court as a contempt thereof. In any matter under investigation which concerns the operation or inspection of or outcome recorded on any voting machine, the commission may issue an order to the municipal clerk to impound such machine until the investigation is completed;

(2) To levy a civil penalty not to exceed (A) two thousand dollars per offense against any person the commission finds to be in violation of any provision of chapter 145, part V of chapter 146, part I of chapter 147, chapter 148, section 9-12, as amended, subsection (a) of section 9-17, section 9-19b, 9-19e, 9-19g, 9-19h, 9-

19i, 9-20, 9-21, 9-23a, 9-23g, as amended, 9-23h, as amended, 9-23j to 9-23o, inclusive, 9-26, 9-31a, 9-32, 9-35, as amended, 9-35b, 9-35c, 9-40a, 9-42, as amended, 9-43, 9-50a, 9-56, 9-59, 9-168d, 9-170, 9-171, 9-172, 9-409, as amended, 9-410, as amended, 9-412, as amended, 9-436, as amended, 9-436a, 9-453e to 9-453h, inclusive, as amended, 9-453k, as amended, 9-453o, as amended, [or] sections 1 to 3, inclusive, of [this act] public act 03-241 or sections 83 to 90, inclusive, of public act 03-6 of the June 30 special session, or (B) two thousand dollars per offense or twice the amount of any improper payment or contribution, whichever is greater, against any person the commission finds to be in violation of any provision of chapter 150. The commission may levy a civil penalty against any person under subparagraph (A) or (B) of this subdivision only after giving the person an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive. In the case of failure to pay any such penalty levied pursuant to this subsection within thirty days of written notice sent by certified or registered mail to such person, the superior court for the judicial district of Hartford, on application of the commission, may issue an order requiring such person to pay the penalty imposed and such court costs, state marshal's fees and attorney's fees incurred by the commission as the court may determine. Any civil penalties paid, collected or recovered under subparagraph (B) of this subdivision for a violation of any provision of chapter 150 applying to the office of the Treasurer shall be deposited on a pro rata basis in any trust funds, as defined in section 3-13c, affected by such violation;

(3) (A) To issue an order requiring any person the commission finds to have received any contribution or payment which is prohibited by any of the provisions of chapter 150, after an opportunity to be heard at a hearing conducted in accordance with the provisions of sections 4-176e to 4-184, inclusive, to return such contribution or payment to the donor or payor, or to remit such contribution or payment to the state for deposit in the General Fund, whichever is deemed necessary to effectuate the purposes of chapter 150;

(B) To issue an order when the commission finds that an intentional violation of any provision of chapter 150 has been committed, after an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, which order may contain one or more of the following sanctions: (i) Removal of a campaign treasurer, deputy campaign treasurer or solicitor; (ii) prohibition on serving as a campaign treasurer, deputy campaign treasurer or solicitor, for a period not to exceed four years; and (iii) in the case of a party committee or a political committee, suspension of all political activities, including, but not limited to, the receipt of contributions and the making of expenditures, provided the commission may not order such a suspension unless the commission has previously ordered the removal of the campaign treasurer and notifies the officers of the committee that the commission is considering such suspension;

(C) To issue an order revoking any person's eligibility to be appointed or serve as an election, primary or referendum official or unofficial checker or in any capacity at the polls on the day of an election, primary or referendum, when the commission finds such person has intentionally violated any provision of the general statutes relating to the conduct of an election, primary or referendum, after an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive;

(D) To issue an order to enforce the provisions of the Help America Vote Act, P.L. 107-252, as amended from time to time, as the commission deems appropriate;

(4) To inspect or audit at any reasonable time and upon reasonable notice the accounts or records of any campaign treasurer or principal campaign treasurer, as required by chapter 150 and to audit any such election, primary or referendum held within the state; provided, (A) (i) not later than two months preceding the day of an election at which a candidate is seeking election, the commission shall complete any audit it has initiated in the absence of a complaint that involves a committee of the same candidate from a previous election, and (ii) during the two-month period preceding the day of an election at which a candidate is seeking election, the commission shall not initiate an audit in the absence of a complaint that involves a committee of the same candidate from a previous election, and (B) the commission shall not audit any caucus, as defined in subdivision (1) of section 9-372, as amended;

(5) To attempt to secure voluntary compliance, by informal methods of conference, conciliation and persuasion, with any provision of chapters 149 to 153, inclusive, or any other provision of the general statutes relating to any such election, primary or referendum;

(6) To consult with the Secretary of the State, the Chief State's Attorney or the Attorney General on any matter which the commission deems appropriate;

(7) To refer to the Chief State's Attorney evidence bearing upon violation of any provision of chapters 149 to 153, inclusive, or any other provision of the general statutes pertaining to or relating to any such election, primary or referendum;

(8) To refer to the Attorney General evidence for injunctive relief and any other ancillary equitable relief in the circumstances of subdivision (7) of this [section] subsection. Nothing in this subdivision shall preclude a person who claims that

he is aggrieved by a violation of any provision of chapter 152 or any other provision of the general statutes relating to referenda from pursuing injunctive and any other ancillary equitable relief directly from the Superior Court by the filing of a complaint;

(9) To refer to the Attorney General evidence pertaining to any ruling which the commission finds to be in error made by election officials in connection with any election, primary or referendum. Those remedies and procedures available to parties claiming to be aggrieved under the provisions of sections 9-323, as amended by this act, 9-324, 9-328 and 9-329a, as amended, shall apply to any complaint brought by the Attorney General as a result of the provisions of this subdivision;

(10) To consult with the United States Department of Justice and the United States Attorney for Connecticut on any investigation pertaining to a violation of this section, section 9-12, as amended, subsection (a) of section 9-17 or section 9-19b, 9-19e, 9-19g, 9-19h, 9-19i, 9-20, 9-21, 9-23a, 9-23g, as amended, 9-23h, as amended, 9-23j to 9-23o, inclusive, 9-26, 9-31a, 9-32, 9-35, as amended, 9-35b, 9-35c, 9-40a, 9-42, as amended, 9-43, 9-50a, 9-56 or 9-59 and to refer to said department and attorney evidence bearing upon any such violation for prosecution under the provisions of the National Voter Registration Act of 1993, P. L. 103-31, as amended from time to time;

(11) To inspect reports filed with the Secretary of the State and with town clerks pursuant to chapter 150 and refer to the Chief State's Attorney evidence bearing upon any violation of law therein if such violation was committed knowingly and wilfully;

(12) To intervene in any action brought pursuant to the provisions of sections 9-323, as amended by this act, 9-324, 9-328 and 9-329a, as amended, upon application to the court in which such action is brought when in the opinion of the court it is necessary to preserve evidence of possible criminal violation of the election laws;

(13) To adopt and publish regulations pursuant to chapter 54 to carry out the provisions of section 9-7a, this section and chapter 150; to issue upon request and publish advisory opinions in the Connecticut Law Journal upon the requirements of chapter 150, and to make recommendations to the General Assembly concerning suggested revisions of the election laws;

(14) To the extent that the Elections Enforcement Commission is involved in the investigation of alleged or suspected criminal violations of any provision of the general statutes pertaining to or relating to any such election, primary or referendum and is engaged in such investigation for the purpose of presenting evidence to the Chief State's Attorney, the Elections Enforcement Commission shall be deemed a law enforcement agency for purposes of subdivision (3) of subsection (b) of section 1-210, as amended, provided nothing in this section shall be construed to exempt the Elections Enforcement Commission in any other respect from the requirements of the Freedom of Information Act, as defined in section 1-200;

(15) To enter into such contractual agreements as may be necessary for the discharge of its duties, within the limits of its appropriated funds and in accordance with established procedures; [and]

(16) To provide the Secretary of the State with notice and copies of all decisions rendered by the commission in contested cases, advisory opinions and declaratory judgments, at the time such decisions, judgments and opinions are made or issued;

(17) To receive and determine complaints filed under the Help America Vote Act, P.L. 107-252, as amended from time to time, by any person who believes there is a violation of any provision of Title III of P.L. 107-252, as amended. Any complaint filed under this subdivision shall be in writing, notarized and signed and sworn by the person filing the complaint. At the request of the complainant, there shall be a hearing on the record, conducted in accordance with sections 4-167e to 4-184, inclusive. The commission shall make a final determination with respect to a complaint prior to the expiration of the ninety-day period beginning on the date the complaint is filed, unless the complainant consents to a longer period for making such determination. If the commission fails to meet the applicable deadline under this subdivision with respect to a complaint, the commission shall resolve the complaint within sixty days after the expiration of such ninety-day period under an alternative dispute resolution procedure established by the commission.

(b) In the case of a refusal to comply with an order of the commission issued pursuant to subdivision (3) of subsection (a) of this section, the superior court for the judicial district of Hartford, on application of the commission, may issue a further order to comply. Failure to obey such further order may be punished by the court as a contempt thereof.

Approved May 10, 2004

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of final rulemaking action to adopt the following amendments to 3 DCMR Chapter 4, "Hearings," 3 DCMR Chapter 5, "Voter Registration," and 3 DCMR Chapter 7, "Election Procedures."

The District of Columbia Board of Elections and Ethics took final action to adopt the following amendments to 3 DCMR Chapters 4, 5, and 7 at a special board meeting which was held on Wednesday, December 17, 2003. The amendments will alter the Board's administrative complaint procedures so as to accommodate complaints which allege violations of Title III of the Help America Vote Act of 2002 ("the Act"); situate in the Board's regulations the circumstances specified in the Act which would require an individual to vote by special ballot, as well as the procedures by which to appeal the Board's special ballot determinations; outline new voter registration requirements as set forth in the Act, and other purposes.

No comments were received, and no changes were made to the text of the proposed rules as published in the Notice of Proposed Rulemaking (50 DCR 9581, November 14, 2003).

Amend Section 400 by deleting Subsection 400.1 in its entirety and substituting the following in its place:

400.1 The provisions of this chapter shall govern the procedures of the Board in all cases involving petition challenges; alleged violations of the District of Columbia Election Act, as amended; alleged violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, as amended; alleged violations of Title III of the Help America Vote Act of 2002; and petitions requesting the promulgation, amendment, or repeal of any regulation of the Board.

Amend Section 408 by:

1) Deleting Subsection 408.1 in its entirety and substituting the following in its place:

"408.1 An action before the Board shall be commenced by the filing of a written complaint which shall be signed and sworn by the complainant and notarized."

2) Adding a new Subsection 408.6 to read follows:

"408.6 The Board may consolidate complaints alleging violations of Title III of the Help America Vote Act of 2002 if they relate to the same actions or events or raise common questions of law or fact."

Amend Section 428 by adding the following subsections:

428.6 If the Board determines that there is a violation of any provision of Title III of the Help America Vote Act of 2002, the Board shall provide the appropriate remedy.

428.7 If the Board determines that there is no violation of Title III of the Help America Vote Act of 2002, the Board shall dismiss the complaint and publish the results of the hearing on the Board's website.

428.8 The Board shall render final determinations with respect to complaints alleging violations of Title III of the Help America Vote Act of 2002 prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

428.9 If the Board fails to meet the deadline applicable under Subsection 428.8, the complaint shall be resolved within 60 days under alternative dispute resolution procedures established pursuant to Section 431 of this chapter. The record and other materials from any proceedings conducted under standard Board complaint procedures shall be made available for use under the alternative dispute resolution procedures.

Add a new Section 432 to read as follows:

"432 **ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR HELP AMERICA VOTE ACT COMPLAINTS**

432.1 On or before the 5th business day after a final Board determination with respect to a Help America Vote Act Title III complaint is due, the respondent shall designate in writing to the complainant the name of an arbitrator to serve on a panel to resolve the complaint.

432.2 Within 3 business days after the complainant receives the designation of an arbitrator, the complainant shall designate in writing to the respondent the name of a second arbitrator.

432.3 Within 3 business days after the complainant's designation of a second arbitrator, the two arbitrators designated shall select a third arbitrator to complete the panel.

432.4 The arbitration panel may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing

and any briefs or memoranda, but may not receive additional testimony or evidence. In exceptional cases, however, the panel may request that the parties present additional briefs or memoranda.

432.5 The arbitrators shall determine the appropriate resolution of the complaint by a majority vote, and issue a written resolution within 60 days after the final Board determination was due under Subsection 428.8 of this chapter. The 60-day period may not be extended.

432.6 The final resolution of the panel shall be published on the Board's website, and mailed to the complainant, each respondent, and any other interested person who has asked in writing to be advised of the final resolution.

432.7 The final resolution of the arbitration panel is the final resolution of the complaint."

Amend Section 500 by:

1) Deleting the word "and" at the end of Paragraph 500.4(d);

2) Deleting the phrase "May provide applicant's political party affiliation, if any." in Paragraph 500.4(e) And replacing it with the phrase, "Applicant's political party affiliation, if any (optional); and";

3) Adding the following Paragraph to Subsection 500.4:

"(f) Applicant's driver's license number in the case of an applicant who has been issued a current and valid driver's license, or the last 4 digits of the applicant's social security number in the case of an applicant who has not. If an applicant for voter registration has not been issued a current and valid driver's license or a social security number, the Board shall assign the applicant a unique identifier which shall serve to identify the applicant for voter registration purposes."; and;

4) Deleting Subsection 500.8 in its entirety and substituting the following Subsection in its place:

"500.8 If an applicant for voter registration fails to properly complete the mail voter registration form, the Board's registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election."

Amend Section 510 by adding new subsections to read as follows:

"510.9 Individuals who have not previously voted in a federal election in the District and who register to vote by mail shall present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid photo identification, a copy of a current utility bill, bank statement, government check, paycheck, or other document that shows the name and address of the voter.

510.10 Subsection 510.9 shall not apply to:

(a) Individuals whose registration application includes either a driver's license number or at least the last 4 digits of his or her social security number, and with respect to whom the Board has been able to match the provided information with an existing identification record bearing the same number, name, and date of birth as provided in such registration application; and

(b) Individuals entitled to vote otherwise than in person under Federal law."

Amend Section 703 by:

1) Deleting the final period in Subsection 703.1 and inserting in its place the phrase, "except in instances when the time established for closing the polls is extended pursuant to a Federal or District of Columbia court order or any other order.";

2) Deleting the phrase, "at 8:00 p.m." in Subsection 703.2 and inserting the phrase "at the close of polls" in its place, and;

3) Deleting the phrase, "At 8:00 p.m." in Subsection 703.3 and inserting the phrase "At the close of polls" in its place.

Amend Subsection 710.4 by:

1) Amending Subsection 710.4 by inserting the phrase ", or provisional ballot, as it is termed in the "Help America Vote Act of 2002" (Public Law 107-252)," between the words "ballot," and "because";

2) Deleting the word "or" at the end of Paragraph 710.4(h);

3) Deleting the period (".") at the end of Paragraph 710.4(i) and replacing it with a semi-colon (";"), and;

4) Adding the following paragraphs:

(j) Votes in an election for Federal office as a result of a Federal or District of Columbia court order or any other order extending the time established for

closing the polls by a District law in effect 10 days before the date of that election; or

(k) Has not previously voted in a Federal election in the District and who registers to vote by mail and fails to present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid photo identification, a copy of a current utility bill, bank statement, government check, paycheck, or other document that shows his or her name and address.

Amend Section 722 by:

1) Deleting Subsection 722.2 in its entirety and substituting the following in its place:

"722.2: At the time of voting, the Board shall provide the voter with written notice that indicates the manner by which he or she may learn whether the Board has decided to count or reject the voter's special ballot, and of the dates scheduled for hearings for voters whose special ballots are rejected to contest the Board's preliminary determination if they petition to do so.";

2) Deleting current Subsections 722.4 through 722.6 in their entirety, and;

3) Adding new Subsections 722.4 through 722.7 to read as follows:

"722.4 Not earlier than eight (8) days and not later than ten (10) days after the date of any election, the Board shall, upon petition of the voter, conduct a hearing for the voter to contest the Board's preliminary determination to reject the voter's special ballot.

722.5 At the hearing, the voter may appear and give testimony on the question of the decision to reject the special ballot.

722.6 The Board shall make a final determination to either count or reject the voter's special ballot within two (2) days after the date of the hearing.

722.7 The voter may appeal an adverse decision of the Board to the Superior Court of the District of Columbia within three (3) days after the date of the Board's decision. The decision of the court shall be final and not appealable."

Georgia

590-8-2-.01. Administrative Complaint Procedure for Violations of Title III of the Help America Vote Act of 2002.

(1) Any person who believes that a violation of any provision of Title III of the Help America Vote Act of 2002 (Public Law 107-252; 42 U.S.C. 15301, et seq.) has occurred, is occurring, or is about to occur may file a complaint with the Secretary of State. Such complaint shall be open to inspection by the public during business hours upon reasonable notice.

(2) Such complaint shall be in writing and shall be signed and sworn to by the person making the complaint and shall be properly notarized in accordance with state law. The complaint shall be delivered to and served upon the Secretary of State as the chief state election official in person, by U.S. Mail, or by guaranteed overnight delivery.

(3) The Secretary of State shall investigate the allegations of such complaint. If more than one complaint is filed concerning the same alleged violation, the Secretary of State may consolidate such complaints for investigation.

(4) If the complainant requests, the Secretary of State or a designee thereof shall conduct a hearing on the allegations of the complaint. Such hearing may be by telephone, conference call, or in person and shall be recorded.

(5) If the Secretary of State or a designee thereof determines that such complaint is unfounded, the Secretary of State may dismiss the complaint and notify the complainant of her decision. The Secretary of State shall make the results of her investigation into the complaint available for public inspection during normal business hours upon reasonable notice after the matter has been resolved

(6) The Secretary of State or designee thereof shall make a determination of the validity of the complaint within 90 days following the date on which the complaint is received by and filed with the Secretary of State unless the complainant agrees to an extension of such time period.

(7) If the Secretary of State or designee thereof determines that such complaint is valid, the Secretary of State shall take all necessary

and appropriate actions within her authority to address the violation; and

(8) If the Secretary of State or designee thereof does not render a final determination on a complaint filed pursuant to this rule within 90 days after the complaint is filed, or within any extension period to which the complainant has agreed, the Secretary of State or designee thereof will, on or before the third business day after the final determination was due to be issued, initiate proceedings for alternative dispute resolution;

(a) To facilitate alternative dispute resolution, the Secretary of State shall maintain a list of qualified independent professionals who are capable of acting as a mediator, from which the Secretary of State or designee thereof and the complainant shall each choose one mediator to review the case.

(b) The Secretary of State or designee thereof shall designate in writing to the complainant the name of a mediator from the list referenced in section (a) to serve on an alternative dispute resolution panel (resolution panel) to review the complaint.

1. If proceedings for alternative dispute resolution are initiated pursuant to this paragraph, not later than 3 business days after the complainant receives such a designation from the Secretary of State or designee thereof, the complainant shall designate in writing to the Secretary of State or designee thereof the name of a second mediator. If the complainant fails to designate a mediator within the time allowed above, the sole mediator shall review the record from the hearing and make a final recommendation based on the submitted record. Not later than 3 business days after such a designation by the complainant, the two mediators so designated shall select a third mediator to complete the resolution panel. If the complainant fails to designate a mediator within the time allowed above, the sole mediator shall review and dispose of the matter without selecting a second or third mediator.

2. The mediator or resolution panel may review the record compiled in connection with the complaint, including, without limitation, the investigative file on the matter, the audio recording of the hearing, any transcript of the hearing and any briefs or memoranda submitted by the parties but shall not receive any additional testimony or evidence to resolve the matter.

3. The mediator or resolution panel by a majority vote, shall after reviewing the record referenced above, provide a recommendation to the Secretary of State not later than 50 days after the final determination of the Secretary of State was due. This period for issuing a written recommendation will not be extended.

4. Upon receipt of the recommendation from the mediator or resolution panel, the Secretary of State or designee thereof shall issue a final order pursuant to the authority granted under O.C.G.A. 21-2-50.2(c), but such remedy shall not exceed the remedies available under Title III of the Help America Vote Act of 2002.

5. The final order of the Secretary of State or designee thereof will be:
(a) Mailed to the complainant, each respondent and any other person who requested in writing to be advised of the final resolution;
(b) Posted on the website of the Secretary of State; and
(c) Made available by the Secretary of State, upon request by any interested person.

6. A final determination by the Secretary of State or designee thereof is not subject to appeal in any state or federal court.
Authority O.C.G.A. §§ 21-2-1; 21-2-50.2.

GUAM ELECTION COMMISSION

Kumision Ileksion Guåhan

P.O. Box BG • Hagåtña, Guam 96932

Tel: (671) 477-9791/2 • Fax: (671) 477-1895

E-Mail: gec@ite.net Website: www.guamelection.org

GUAM ELECTION COMMISSION
ADMINISTRATIVE COMPLAINT PROCEDURE

AN ACT TO *ADD* § 9154 TO TITLE 3 OF THE GUAM CODE ANNOTATED, RELATIVE TO ADMINISTRATIVE COMPLAINT PROCEDURES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Section 9154 is hereby *added* to Chapter 9 of Title 3 of the Guam Code Annotated to read as follows:

"Section 9154. Administrative Complaint Procedures.

(a) Scope. These provisions provide a uniform, nondiscriminatory procedure for resolving any complaint alleging a violation of any provision of Title III of the Help America Vote Act of 2002 ("HAVA"), including a violation that has occurred, is occurring, or is about to occur. This procedure does not apply to alleged violations of Guam or federal law not involving Title III. Any writing received by the Guam Election Commission that does not appear to involve an alleged violation of Title III shall be referred to appropriate persons or agencies for processing.

(b) Definitions.

(1) "Complainant" means the person who files a complaint with the Guam Election Commission under these provisions.

(2) "Person" shall be any individual residing in Guam, at the time the complaint is filed.

(3) "Respondent" means any Guam Election Official or local election official, or any other person or entity, whose action or actions are alleged, in a complaint under these provisions, to have violated, are violating, or are about to violate Title III.

(4) "Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code Â§Â§15481-15485.

(c) Who May File. Any person who believes that there has been a violation, there is a violation, or a violation is about to occur of any provision of Title III may file a complaint.

(d) Form of Complaint.

(1) Writing and Notarization. As required by HAVA, a complaint shall be in writing and notarized, signed and sworn by the Complainant.

(2) What to File.

a. The Complainant may use the form prescribed by the Guam Election Commission, which will be available from the Guam Election Commission, from local election officials, or which may be downloaded from the Guam Election Commission's website or made interactive on the Guam Election Commission's website. Alternatively, the

Complainant may use any other writing containing the information solicited by the prescribed form.

b. The form prescribed by the Guam Election Commission shall be available in versions translated into all languages applicable, pursuant to Section 203 of the Voting Rights Act, to any jurisdiction in Guam.

c. The Guam Election Commission shall consult with an advisory committee, appointed for such purpose, on ways to ensure that the complaint procedure is accessible to persons with disabilities.

(e) Place and Time for Filing.

(1) Where to File. A complaint shall be sent to: Guam Election Commission, P.O. Box BG, Hagatna, Guam 96932, or delivered in person to the Office of the Guam Election Commission, Suite 200, GCIC Building, 414 W. Soledad Avenue, Hagatna, Guam 96910.

(2) When to File. A complaint shall be filed within 60 days after the occurrence of the actions or events that form the basis for the complaint, or within 90 days after the Complainant becomes aware of the actions or events, whichever is later.

(f) Processing of Complaint.

(1) Consolidation. The Guam Election Commission may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.

(2) Notice to Respondents. The Guam Election Commission, at a time which it deems appropriate, but in any case prior to making any determination regarding the complaint, shall notify all Respondents of the allegations made in the complaint. This subsection shall not apply if the Guam Election Commission has reason to believe that notifying a respondent or respondents of the complaint filed might compromise a criminal investigation or prosecution or other enforcement action by any local, state or federal agency.

(3) Record.

a. The Guam Election Commission shall compile and maintain an official record in connection with each complaint filed pursuant to these provisions.

b. The official record shall contain:

1. A copy of the complaint, including any amendments;

2. A copy of any written submission by the Complainant;

3. A copy of any written response by any Respondent or other interested person;

4. A written report of any investigation conducted by agents of the Guam Election Commission or of any local election official, who may not be directly involved in the actions or events complained of;

5. Copies of all notices and correspondence to or from the Guam Election Commission in connection with the complaint;

6. Originals or copies of any tangible evidence produced at any hearing conducted under subsection 9154(f)(4) of this section;

7. The original tape recording produced at any oral hearing conducted under subsection 9154(f)(4) of this section, and a copy of any transcript produced; and

8. A copy of any final determination made under subsection 9154(f)(5) of this section.

(4) Hearing.

a. At the request of the Complainant, the Guam Election Commission shall conduct a hearing on the record. This hearing may be oral, at the discretion of the Guam Election Commission, but otherwise it shall be based on:

1. All writings and tangible evidence received under subsection 9154(f)(3).

2. The hearing shall be conducted no sooner than 10 days and no later than 60 days after the Guam Election Commission receives the complaint.

3. The Guam Election Commission may designate the Executive Director or any other qualified person to act as the hearing officer.

(5) Final Determination.

a. The Guam Election Commission's designated hearing officer shall review the record, including the record of any hearing conducted, and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established.

b. Form of Determination.

1. If the Guam Election Commission or its designated hearing officer determines that a violation of Title III has occurred, the Guam Election Commission shall provide an appropriate remedy if an appropriate remedy is available. No remedy may involve the awarding of compensatory or punitive monetary damages to a Complainant.

2. If the Guam Election Commission or its designated hearing officer determines that violation of Title III has not occurred or that there is insufficient evidence to establish a violation of Title III, the Guam Election Commission shall dismiss the complaint.

c. The Guam Election Commission or its designated hearing officer shall explain in a written decision the reasons for the determination and for any remedy selected.

d. Except as specified in subsection 9154(f)(5)e of this section, the final determination of the Guam Election Commission shall be issued within 90 days after the complaint was filed, unless the Complainant consents in writing to an extension. The final determination shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final determination. It shall also be published on the Guam Election Commission website and made available on request to any interested person. However, no mailing,

publication or other providing of the determination or remedy shall be required if the Guam Election Commission has reason to believe that such mailing, publication or providing might compromise a criminal investigation or prosecution or other enforcement action by any local, state or federal agency.

e. If the Guam Election Commission cannot make or has not made a final determination within 90 days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be referred for final resolution under subsection 9154(f)(6) of this section. The record compiled under subsection 9154(f)(3) of this section shall be made available for use under subsection 9154(f)(6).

(6) Alternate Dispute Resolution.

a. If, for any reason, the Guam Election Commission or its designated hearing officer does not render a final determination within 90 days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be resolved under this subsection.

b. On or before the 5th business day after a final Guam Election Commission determination was due, the Guam Election Commission shall designate in writing a Hearing Officer who shall be a neutral party not associated with the Complainant or any respondent.

c. The Hearing Officer may review the record compiled in connection with the complaint, but need not receive additional testimony or evidence. The Hearing Officer may request that the parties present additional briefs, memoranda, or oral testimony.

d. The Hearing Officer shall determine the appropriate resolution of the complaint. No resolution may involve the awarding of compensatory or punitive monetary damages to a Complainant.

e. The Hearing Officer must issue a written resolution within 60 days after the final Guam Election Commission determination was due under subsection 9154(f)(5) of this section. This 60-day period may not be extended without the express consent of the Complainant. The final resolution shall be transmitted by the Hearing Officer to the Guam Election Commission and shall be the final resolution of the complaint. The final resolution shall be mailed by the Guam Election Commission to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final resolution. It shall also be published on the Guam Election Commission website and made available on request to any interested person. However, no mailing, publication or other providing of the determination or remedy shall be required if the Guam Election Commission has reason to believe that such mailing, publication or providing might compromise a criminal investigation or prosecution or other enforcement action by any local, state or federal agency.

(g) Effective Date. This complaint procedure shall be effective upon its posting on the Guam Election Commission's website and shall remain in effect until superceded by any modification, repeal, regulation or statute.

GUAM ELECTION COMMISSION

Kumision Ileksion Guåhan

P.O. Box BG • Hagåtña, Guam 96932
Tel: (671) 477-9791/2 • Fax: (671) 477-1895
E-Mail: gec@ite.net Website: www.guamelection.org

Administrative Complaint Form

Please Type or Print all of the information on this form.

Section 1 – Your Personal Information

Last name: _____ First Name: _____ M.I.: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Day Phone: _____ Evening Phone: _____ Fax No: _____

Section 2 – Subject of your Complaint

Your complaint may be a Guam or Federal law violation. Common complaints are listed below. Please check off the subject of your complaint and explain in detail in Section 3 on the reverse side.

Guam Law Violations

- ☐ I was not allowed to vote in private.
- ☐ I was not allowed to turn in my absentee ballot.
- ☐ I was not allowed to ask questions or ask for assistance.
- ☐ I was not allowed to vote, even though I was standing in line before the polls closed.
- ☐ I was not able to vote because I was not given assistance to accommodate my disability.
- ☐ I was not able to vote because I was not given assistance in my own language.
- ☐ I was not provided election materials in my own language.
- ☐ My voter registration information was altered.
- ☐ I did not observe a sample ballot at the polls.
- ☐ I observed the casting of a fraudulent vote.
- ☐ My polling place was not open on time, or not at all.
- ☐ I observed pollworkers acting or saying something discriminatory.
- ☐ I observed inappropriate electioneering or campaigning too close to the polls.
- ☐ I was not allowed to re-vote after I made a mistake.
- ☐ I observed precinct officials neglecting to perform their duties.
- ☐ Other Guam Law violation: _____

Federal Law Violations

Note: All allegations of Federal law violations must be notarized (see reverse side). The Help America Vote Act (P.L. 107-252) allows individuals to file a complaint if a violation has occurred, is occurring, or is about to occur.

- ☐ I was not allowed to vote using a provisional ballot.
- ☐ Required voting information was not publicly posted in a polling place on Election Day.
- ☐ Other Federal Law Violation: _____
- ☐ Provisions regarding verification of new voter registration were not followed.
- ☐ I was not able to determine whether my provisional ballot was counted.

Continue on Reverse Side

(Rev 4/05)

Section 3 – Details of the Complaint.

Explain the details of your complaint. Include names (such as names of any witnesses), addresses (including the address of the polling place), dates, and any other information to fully describe what happened. If you need additional space, please attach a separate sheet.

_____

_____

_____

_____

_____

_____

Section 4 – Sign and Attest.

I declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

Executed on: _____ at: _____
(Date) (City / State or Territory)

Signature of Person Filing Complaint: _____

If your complaint is a Federal Law Violation, a notary public must complete the following certificate of acknowledgment.

CERTIFICATE OF ACKNOWLEDGMENT

_____)
)
Guam) SS
)
_____)

On: _____ before me, _____
(Date) (Name of Notary)

personally appeared _____
(Name of Complainant)

personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed above and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature the person, or the entity upon behalf of which the person acted, executed this instrument.

WITNESS my hand and official seal.
(Notary Seal)

_____
(Notary Signature)

Return this form to:
Executive Director, Guam Election Commission
414 West Soledad Avenue
Hagatna, Guam 96910

OFFICE OF ELECTIONS
STATE OF HAWAII

STATE ADMINISTRATIVE
COMPLAINT PROCEDURES

How to File a Complaint

A complaint must be in writing and notarized under oath by the person filing the complaint (the "complainant"). A complaint must be filed within 30 days after the occurrence of the actions or events that form the basis for the complaint. For violations that are occurring or about to occur, the complaint should be filed as soon as possible to provide ample time to remedy the problem.

The complainant may file a preliminary complaint on election day with the State Office of Elections. At the time of the call, the Office of Elections or the county clerk shall inform the complainant of the requirements to file an official complaint.

Where To File A Complaint

The complaint must be filed with the Chief Election Officer at:

State Office of Elections
802 Lehua Avenue
Pearl City, Hawaii 96782

Complaints may be consolidated if they relate to the same actions or raise common questions of law or fact.

Hearing and Administrative Determination

A complainant may request that the Chief Election Officer, or a designee, conduct a hearing on the record in writing. The hearing will be conducted not later than 30 days after the Chief Election Officer receives the complaint.

The Chief Election Officer will give at least five days advance notice of the date, time and place of the hearing to the complainant and to each named respondent.

If a hearing is not requested, the Chief Election Officer will review the complaint and make a determination without a hearing.

The Chief Election Officer may request an informal conference of the parties to resolve the complaint.

If the Chief Election Officer determines that a violation has occurred, he will order an appropriate remedy.

The Chief Election Officer will issue a final determination within 90 days after the complaint is filed unless the complainant consents in writing to an extension.

The final determination will be mailed to the complainant and to each respondent and will be posted at the Office of Elections.

If the Chief Election Officer does not issue a final determination within 90 days after the complaint was filed or within any extension to which the complainant consents, the complaint will be referred to an arbitrator for resolution within 60 days.

Table of Contents

34.02.02 - Rules Governing Complaint Process Under the Help America Vote Act

34.02.02 - RULES GOVERNING COMPLAINT PROCESS UNDER THE HELP AMERICA VOTE ACT

000. LEGAL AUTHORITY.
This chapter is promulgated pursuant to Section 34-216, Idaho Code, and 42 U.S.C. Section 15512. Federal law requires the Secretary of State to establish an administrative complaint procedure to remedy grievances under the Help America Vote Act, 42 U.S.C. Section 15481, et seq. (3-20-04)

001. TITLE AND SCOPE.

01. Title. The rules in this chapter shall be known as IDAPA 34.02.02, "Rules Governing Complaint Process Under the Help America Vote Act," and may be cited as IDAPA 34.02.02. (3-20-04)

02. Scope. This chapter provides a uniform, nondiscriminatory procedure for the resolution of any complaint alleging a violation of any provision of Title III of the Help America Vote Act of 2002, 42 United States Code Sections 15481, et seq., including a violation that has occurred, is occurring, or is about to occur. The procedure set out in this chapter does not apply to an election recount under Sections 34-2301 et seq., Idaho Code, or to an election contest under Sections 34-2001 et seq., and 34-2101 et seq, Idaho Code. A Complainant who wishes to challenge the validity of any primary, general or special election, or to determine the validity of any ballot or vote must seek relief as otherwise provided by law. (3-20-04)

002. WRITTEN INTERPRETATIONS.
Written Interpretations of this chapter are available by mail from the Idaho Secretary of State. (3-20-04)

003. ADMINISTRATIVE APPEALS.
Administrative appeals are not available within the Secretary of State's Office. (3-20-04)

004. INCORPORATION BY REFERENCE.
No documents have been incorporated by reference into this Chapter. (3-20-04)

005. CONTACT INFORMATION.
Office of Secretary of State, 8 a.m. - 5 p.m. Monday through Friday, 700 W. Jefferson, Rm. 203, Boise, Idaho. The mailing address is P.O. Box 83720, Boise, ID 83720-0080. The Election Division telephone number is (208) 334-2852 and the facsimile machine is (208) 334-2282. (3-20-04)

006. PUBLIC RECORDS ACT COMPLIANCE.
This chapter and its contents are subject to the Idaho Public Records Law. (3-20-04)

007. -- 009. (RESERVED).

010. DEFINITIONS.
In this chapter, the following terms have the meanings indicated. (3-20-04)

01. Complainant. Means the person who files a complaint with the Secretary of State under this rule; (3-20-04)

02. Respondent. Means any State or County election official whose actions are asserted, in a complaint under this subtitle, to be in violation of Title III; (3-20-04)

03. Title III. Means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code Sections 15481-15485. (3-20-04)

011. WHO MAY FILE.
Any person who believes that there is a violation of any provision of Title III may file a complaint. (3-20-04)

012. FORM OF COMPLAINT.

01. **Writing and Notarization.** A complaint shall be in writing and notarized, signed and sworn under oath by the Complainant. The complaint must identify the Complainant by name and mailing address. The complaint must identify the section of Title III for which a violation is alleged. The complaint must set out a clear and concise description of the claimed violation that is sufficiently detailed to apprise both the Respondent and the hearing officer or arbitrator of the claimed violation. The complaint procedure is limited to allegations of violations of Title III in a federal election. (3-20-04)

02. **Prescribed or Other Form.** The Complainant may use: (3-20-04)

a. The form prescribed by the Idaho Secretary of State, which is available from the Idaho Secretary of State Election Division, or which may be downloaded from the Idaho Secretary of State Election Division's website found at www.idsos.state.id.us/elect/eleindex.htm; or (3-20-04)

b. Any other form satisfying the requirements of Subsection 012.02.a. of this rule. (3-20-04)

013. PLACE AND TIME FOR FILING, COPY FOR RESPONDENT.

01. **Place for Filing.** A complaint shall be filed with the Election Division, along with adequate proof of mailing or delivery of a copy of the complaint to each Respondent. (3-20-04)

02. **Time for Filing.** A complaint may be filed no later than ninety (90) days after the final certification of the federal election and at issue. A complaint may be filed anytime prior to an election. (3-20-04)

03. **Copy for Respondent.** The Complainant shall mail or deliver a copy of the complaint to each Respondent. (3-20-04)

04. **Rejection of Complaint.** The Election Division shall examine each complaint, and may reject it for filing if: (3-20-04)

a. It is not signed and notarized under oath; (3-20-04)

b. It does not identify the Complainant or include an adequate mailing address; (3-20-04)

c. Does not, on its face, allege a violation of Title III with regard to a federal election; or (3-20-04)

d. More than ninety (90) days have elapsed since the final certification of the federal election at issue. (3-20-04)

014. PROCESSING OF COMPLAINT.

01. **Consolidation.** The Secretary of State may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact. (3-20-04)

02. **Preparing the Complaint for Determination.** The Secretary of State shall take all necessary steps to prepare the complaint for determination under these rules. In the course of preparing the complaint for determination, the Secretary of State shall allow a party to proceed with the assistance of an English language interpreter if the Complainant is unable to proceed without assistance of an interpreter. It is the responsibility of the party who needs an interpreter to secure the services of the interpreter. The Secretary of State, in coordination with the parties, shall establish a schedule under which the Complainant and Respondent may file written submissions concerning the complaint, and under which the complaint shall be finally determined. (3-20-04)

03. **Record.** (3-20-04)

a. The Secretary of State shall compile and maintain an official record in connection with each complaint under this rule; (3-20-04)

b. The official record shall contain: (3-20-04)

i. A copy of the complaint including any amendments made with the permission of the Secretary of State; (3-20-04)

ii. A copy of any written submission by the Complainant; (3-20-04)

iii. A copy of any written response by any Respondent or other interested person; (3-20-04)

iv. A written report of any investigation conducted by employees of the Secretary of State or Office of Attorney General who shall not be directly involved in the actions or events complained of, and shall not directly supervise or be directly supervised by any Respondent; (3-20-04)

v. Copies of all notices and correspondence to or from the Secretary of State in connection with the complaint; (3-20-04)

vi. Originals or copies of any tangible evidence produced at any hearing conducted under Section 015; (3-20-04)

vii. The original tape recording produced at any hearing conducted under Subsection 015.07 of these rules, and a copy of any transcript obtained by any board or other party; and (3-20-04)

viii. A copy of any final determination made under Sections 016 or 017. (3-20-04)

015. HEARING.

01. **Hearing on the Record.** At the request of the Complainant, the Secretary of State shall conduct a hearing on the record. (3-20-04)

02. **Time Frame for Hearing.** The hearing shall be conducted no sooner than ten (10) days and no later than thirty (30) days after the Secretary of State receives the complaint. The Secretary of State shall give at least ten (10) business days' advance notice of the date, time, and place of the hearing: (3-20-04)

a. By mail, to the Complainant, each named Respondent, and any other interested person who has asked in writing to be advised of the hearing; (3-20-04)

b. On the Election Division web site; and (3-20-04)

c. By posting in a prominent place, available to the general public, at the offices of the Election Division; (3-20-04)

03. **Hearing Officer.** The Secretary of State or his designee shall act as hearing officer. (3-20-04)

04. **Who May Appear.** The Complainant, any Respondent, or any other interested member of the public may appear at the hearing and testify or present tangible evidence in connection with the complaint. Each witness shall be sworn. The hearing officer may limit the testimony, if necessary, to ensure that all interested participants are able to present their views. The hearing officer may recess the hearing and reconvene at a later date, time, and place announced publicly at the hearing. (3-20-04)

05. **Representation by an Attorney Not Necessary.** A Complainant, Respondent, or other person who testifies or presents evidence at the hearing may, but need not be, represented by an attorney. (3-20-04)

06. **Written Presentation.** If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence subsequently presented, that person is not entitled to be heard again, but may make a written presentation to the hearing officer. (3-20-04)

07. Tape Recording of Proceedings. The proceedings shall be tape-recorded by and at the expense of the Election Division. The recording shall not be transcribed as a matter of course, but the Election Division, or any party may obtain a transcript at its own expense. If a party obtains a transcript, the party shall file a copy as part of the record, and any other interested person may examine the record copy. (3-20-04)

08. Filing of Written Brief or Memorandum. Any party to the proceedings may file a written brief or memorandum within five (5) business days after the conclusion of the hearing. No responsive or reply memoranda will be accepted except with the specific authorization of the hearing officer. (3-20-04)

016. FINAL DETERMINATION.

01. If No Hearing is Held. If there has been no hearing under Section 015, the Secretary of State or his designee shall review the record and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established. (3-20-04)

02. Determination of Violation. At the conclusion of any hearing under Section 015, the hearing officer shall determine, under a preponderance of the evidence standard, whether a violation of Title III has been established. (3-20-04)

03. Form of Determination. (3-20-04)

a. If the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has occurred, the Secretary of State shall provide the appropriate remedy. The remedy shall be directed to the improvement of processes or procedures governed by Title III. The remedy so provided may include an order to any Respondent, commanding the Respondent to take specified action, or prohibiting the Respondent from taking specified action, with respect to a past or future election; however, the remedy may not include an award of money damages or attorney's fees. The remedy may not include the denial of certification or the invalidation of any primary, general or special election, or a determination of the validity of any ballot or vote. Remedies addressing the certification of an election, the validity of an election, or of any ballot or vote may be obtained only as otherwise provided by law; (3-20-04)

b. If the complaint is not timely or not in proper form, or if the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has not occurred, or that there is not sufficient evidence to establish a violation, the Secretary of State shall dismiss the complaint; (3-20-04)

04. Explanation in Written Decision. The Secretary of State or his designee shall explain in a written decision the reasons for the determination and for any remedy selected. (3-20-04)

05. Issuance of Final Decision. Except as specified in Section 017, the final determination of the Secretary of State shall be issued within ninety (90) days after the complaint was filed, unless the Complainant consents in writing to an extension. The final determination shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final determination. It shall also be published on the Division's website and made available on request to any interested person. If the Secretary of State cannot make a final determination within ninety (90) days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be referred for final resolution under Section 017. The record complied under Section 014 of this rule shall be made available for use under Section 017. (3-20-04)

017. ALTERNATE DISPUTE RESOLUTION.

If, for any reason, the Secretary of State or his designee does not render a final determination within ninety (90) days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be resolved under this Section 017. (3-20-04)

01. Time Frames for Choosing and Arbitrator. On or before the fifth business day after a final determination by the Secretary of State was due, the Secretary of State shall designate in writing to the Complainant a list of names of arbitrators who may resolve the complaint. Within three (3) business days after the Complainant receives this designation, the Complainant and the Secretary of State shall arrange to choose an arbitrator from this

list by striking names from the list until an arbitrator acceptable to both parties is chosen. Within three (3) business days after the parties strike names, the Secretary of State shall contact the arbitrator chosen and arrange for the hearing by the arbitrator. (3-20-04)

02. Information the Arbitrator May Review. The arbitrator may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but shall not receive additional testimony or evidence. In exceptional cases, the arbitrator may request that the parties present additional briefs or memoranda. (3-20-04)

03. Resolution of Complaint. The arbitrator shall determine the appropriate resolution of the complaint as set out in these rules. (3-20-04)

04. Issuance of Written Resolution. The arbitrator must issue a written resolution within sixty (60) days after the final determination of the Secretary of State was due under Section 016. This sixty (60) day period may not be extended. The final resolution of the arbitrator shall be transmitted to the Secretary of State and shall be the final resolution of the complaint. The final resolution shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final resolution. It shall be published on the Election Division website and made available on request to any interested person. (3-20-04)

018. -- 999. (RESERVED).

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Subject Index

Click here to clear form.

STATE OF IDAHO
OFFICE OF THE SECRETARY OF STATE

Administrative Complaint Under the Help America Vote Act of 2003

Pursuant to IDAPA 34, Title 02, Chapter 02, a complaint is filed alleging a violation of the provisions of Title III of the federal Help America Vote Act of 2002.

Date of complaint: _____

Complainant

Name: _____

Address: _____

_____

Telephone: _____

Other Person Who May Have Knowledge of the Alleged Violation

Name: _____

Address: _____

_____

Telephone: _____

County and/or precinct in which violation occurred or is occurring: _____

Date of alleged violation: _____

Section of Title III for which a violation is alleged: _____

(continued on back of page)

Mail complaint to: Secretary of State, 700 West Jefferson #203, PO Box 83720, Boise ID 83720-0080

Description of the Alleged Violation
(Be as specific as possible, citing dates, places, persons, and corroborative details. Attach additional sheets if needed.)

I hereby certify that the information provided above is true and correct to the best of my knowledge.

Complainant

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20____.

Notary Public

My Commission Expires on:

ILLINOIS

TITLE 26: ELECTIONS

CHAPTER I: STATE BOARD OF ELECTIONS

PART 125.425

SUBPART H: ADMINISTRATIVE COMPLAINT PROCEDURES FOR VIOLATIONS OF TITLE III OF HAVA

Section 125.805 Applicability

This subpart shall apply to the procedures utilized by the State Board of Elections to resolve complaints filed pursuant to Title IV Section 402 of the Help America Vote Act. These Rules are authorized by the Act and Section 100/10-5 of the Illinois Administrative Procedure Act [5 ILCS 100/10-5 et seq.].

Section 125.810 Definitions

As used in this Subpart, the following terms shall have the meanings specified:

a) "Act" means the Help America Vote Act, [Public Law No. 107-252] and all amendments thereto;

b) "Board" means the State Board of Elections;

c) "Code" means the Illinois Election Code

d) "Complainant" means a party initiating a proceeding under the Act by the filing of a complaint;

e) "Election Authority" means the county clerk in all counties that do not have a county board of election commissioners, the county board of election commissioners in those counties that have adopted the provisions of Article 6A of the Election Code and the city board of election commissioners in those cities that have adopted the provisions of Article 6 of the Election Code.

f) "Federal Election" means any election in which candidates for federal office are scheduled to be elected or nominated. For purposes of this Subsection, federal offices are President and Vice President of the United States, United States Senator, Representative in the United States Congress, delegates and alternate delegates to the national nominating convention and candidates for the Presidential Preference Primary.

g) "Hearing" means the Closed Preliminary Hearing held pursuant to Section 125.130(b).

h) "Respondent" means any named entity subject to the provisions of Title III of HAVA against whom a complaint is filed.

Section 125.815 Filing of a Complaint

Any person who believes that a violation of any provision of Title III of the Act has occurred, is occurring or is about to occur, may file a complaint with the State Board of Elections. Such complaint must be filed no later than 90 days following the occurrence of the violation or 90 days following the Federal Election in connection with which the violation occurred, whichever date is later. Any complaint filed under this Section must allege a violation of Title III of the Act, must state specifically the nature of the violation and must be well grounded in fact and in law. In addition, the complaint must state whether or not the complainant desires a Hearing on the record before the State Board of Elections.

Section 125.820 Form of Complaint

a) All complaints filed under this Subsection shall be in writing and signed and sworn to (or affirmed) by the person filing the complaint and shall be notarized. In addition, the complaint shall contain the following:

1) The complaint shall be directed to and state the name of the Respondent against whom the complaint is directed;

2) The complaint shall state the provisions of the Act which are alleged to have been violated;

3) The complaint shall state the time, place and nature of the alleged offense; and

4) The complaint shall be verified, dated and signed by the complainant, in substantially the following manner:

Verification
"I declare that this complaint (including any accompanying exhibits and statements) has been examined by me and to the best of my knowledge and belief is a true and correct complaint as required by Section 402 of the Help America Vote Act."

Signed and sworn to (or affirmed) by _____ before me, on
_____
Name of Complainant

this _____ day of _____.

_____
Signature of Notary Public
(SEAL OF NOTARY)

b) Upon the filing of a complaint, the office of the General Counsel shall assign a docket number to the complaint and proceeding, and all documents thereafter filed pertaining to that particular complaint or proceeding shall include the docket number first assigned.

c) The complaint shall bear the address, telephone number and fax number of the complainant or of his attorney or his authorized representative and the designation of such address or fax number shall be deemed to be consent by the complainant to have a copy of all documents filed or to be filed thereafter served upon the party at such address or fax number.

Section 125.825 Service of Complaint

A copy of the complaint must be served upon the Respondent. Service shall be complete when the document is served as provided in the Civil Practice Law [735 ILCS 5/2-203(a)], in person upon the party or his attorney or authorized representative, or deposited for mailing with the United States Postal Service, postage prepaid, registered or certified, addressed to the party.

Section 125.830 Preliminary Review of the Complaint

a) Any complaint naming an Election Authority as Respondent shall proceed under subsections b) through e) below. A complaint naming the Board as Respondent shall proceed to the alternative dispute resolution procedures set out in Subsection 125.945 below, unless the complainant waives this provision and agrees to proceed under Subsection b) through e). Any such waiver shall be in writing and signed by the Complainant. A complaint naming both the Board and an Election Authority as Respondents shall be separated for jurisdictional purposes with each Respondent subject to the procedures set out in the first two sentences of this Subsection.

b) Upon the filing of a complaint naming an Election Authority as Respondent or upon the filing of a complaint naming the Board as a Respondent and containing a waiver as provided in Subsection a) above, the General Counsel shall perform a preliminary review to determine whether or not the complaint meets the following requirements to constitute a valid complaint under the Act.

1) The complaint alleges a violation under Title III of the Act;

2) The complaint pertains to a Federal Election and

3) The complaint states sufficient facts as to constitute a cause of action under the Act for which the Board can grant proper relief.

If the General Counsel determines that the complaint meets the above criteria for a valid complaint under the Act, then the complaint shall proceed under subsection c) and d) below. If the General Counsel determines that the complaint has not met the above criteria for a valid complaint under the Act, the complaint

shall be presented to the Board for a final determination of its status. In addition, the Complainant shall be notified in writing of the General Counsel's determination of the complaint's invalidity and be given an opportunity to appear before the Board to show cause as to why the complaint should not be dismissed. The decision of the Board as to the status of the complaint shall be in the form of a Final Order subject to appeal under the provisions of Section 9-22 of the Code. As an alternative to summary dismissal of the complaint, the Board may determine that the complaint alleges a violation of the Code and refer it for investigation to the appropriate division of the Board or to the appropriate Election Authority or law enforcement agency.

c) After a determination by the General Counsel that the complaint meets the criteria set out in Subsection a) above, and upon the written request of the Complainant, the Board shall appoint a Hearing Examiner to conduct a Closed Preliminary Hearing. This Hearing shall be held to determine whether the complaint is well grounded in fact and law. Such request must be a part of or accompany the complaint when filed. Following the Hearing, the Hearing Examiner shall make a written recommendation as to whether the complaint is well grounded in fact and law and a copy of the recommendation shall be given to the General Counsel for his recommendation and to both parties to the complaint. Upon receipt of the recommendation of the Hearing Examiner and the General Counsel, the Board shall make a final determination as to the merits of the complaint and shall make a decision as to what, if any action should be taken as a result of the complaint. The final determination and decision shall be in the form of a Final Order subject to appeal under the provisions of Section 9-22 of the Code.

d) Should the Complainant fail to request a Hearing, the Board shall appoint a Hearing Examiner to make a recommendation based solely on the complaint, any evidence submitted with the complaint and any response offered by the Respondent as to whether the complaint is well grounded in fact and law. The Hearing Examiner shall allow the Respondent an opportunity for a Hearing to present evidence supporting any offered defense (both documentary and/or testimonial) prior to the Hearing Examiner submitting the recommendation to the General Counsel. The Complainant shall be given notice and an opportunity to be present and participate in the Hearing; however, failure of the Complainant to appear at such Hearing shall not factor into the Hearing Examiner's recommendation as to whether the complaint is well grounded in fact and law. The Hearing Examiner, after consideration of all evidence presented by the parties, shall prepare a written recommendation to be given to both the General Counsel for his recommendation and to both parties to the complaint. Upon receipt of the recommendation of the Hearing Examiner and the General Counsel, the Board shall make a final determination as to the merits of the complaint and shall make a decision as to what, if any action should be taken as a result of the complaint. The final determination and decision shall be in the form of a Final Order subject to appeal under the provisions of Section 9-22 of the Code.

e) The proceedings of the Hearing shall be recorded either by a certified court reporter or by means of an electronic recording device. Any party may provide for their own recording of the proceedings of the Hearing utilizing a court reporter or any other recording device. Any associated costs however, shall be born by the party providing for the recording.

f) The Board shall render a final determination of the matters alleged in the complaint within 90 days of the filing of the complaint. Such time period may be extended by a written waiver of the Complainant. If the Board cannot resolve the issues raised in the complaint by the end of the 90 day period and no such waiver is provided by the Complainant, then the Board shall order the matter to be resolved by an alternative dispute resolution mechanism described in Section 125.945.

Section 125.835 Documents Pertaining to Hearings

All documents, including but not limited to complaints, notices and motions, shall be filed with the Hearing Examiner and a copy shall be served upon the adverse party or their attorney or other authorized representative as provided by Section 125.825 or if agreed to by the parties, facsimile or electronic mail transmission.

Section 125.840 Computation of Time

Computation of the 90 day period of time mandated by Section 125.830 (e) shall begin with the first day following the day on which the complaint is filed, and shall run until the end of the 90th day, or the next following business day if the 90th day is a Saturday, Sunday or State holiday as defined in Section 5/1-6 of the Code.

Section 125.845 Appearances

a) The parties to a complaint filed under this Section may appear as follows:

1) The Complainant may appear on his own behalf or by any authorized representative, including an attorney at law licensed and registered to practice in the State of Illinois, or both;

2) The Respondent may appear by any bona fide officer, employee, or other authorized representative, including an attorney licensed and registered to practice in the State of Illinois, or both.

b) Attorneys not licensed and registered to practice in the State of Illinois may appear on motion, subject to approval of the Hearing Examiner.

c) Any person appearing in a representative capacity shall file a written notice of appearance with the Hearing Examiner. Such appearance form may be submitted at the beginning of the Hearing, or if no Hearing is requested by the complainant, then such appearance shall be submitted within 5 business days following the filing of the complaint.

Section 125.850 Non-legal Assistance

Any party involved in the complaint proceeding shall have the right to the presence and participation of additional persons in order to provide technical assistance and consultation. To maintain order, the Hearing Examiner may at his discretion restrict the number of such additional persons who may attend and participate in the proceedings.

Section 125.855 Designation of Parties

If a complete determination of the complaint cannot be had without the presence of other parties, the Hearing Examiner or the Board may direct them to be brought in. Service of process shall be as provided in Section 125.825 and any subsequent motions and other documents shall be as provided in Section 125.835(b).

Section 125.860 Answer

Any respondent may file a written answer to a complaint prior to or at the time of any proceeding or Hearing, but shall not be required to file an answer. The failure to file an answer shall not be deemed an admission of any allegation in the complaint nor a consent to any requested relief. The answer shall be filed with the Hearing Examiner and at least one copy shall be served upon all other parties to the proceeding, in accordance with Section 125.835(b).

Section 125.865 Appointment and Qualifications of Hearing Examiner

Within 5 business days of the filing of a complaint, the General Counsel shall appoint a Hearing Examiner to hear the complaint, who shall be a licensed attorney in the State of Illinois. Written notice of the appointment of the Hearing Examiner shall be provided to the parties within 5 business days of their appointment.

Section 125.870 Authority of Hearing Examiner

The Hearing Examiner has the authority to conduct and preside over the Hearing and is empowered to take all necessary action to avoid delay, to maintain order, to ensure compliance with all requirements contained in this Subpart, and to ensure the development of a clear and complete record and shall have all powers necessary to conduct a fair and impartial Hearing.

Section 125.875 Disqualification of Hearing Examiner

Any party to a Hearing may file a written request for disqualification of the Hearing Examiner, setting forth the nature of the personal bias, prejudice, or other grounds for disqualification. Such request shall be made to the General Counsel who will make the decision as to whether the Hearing Examiner should be disqualified. When a Hearing Examiner is disqualified, or it becomes impractical for him to continue, another Hearing Examiner shall be appointed in the same manner as provided for the initial appointment. A Hearing Examiner may at any time voluntarily disqualify himself. A request for disqualification made by a party shall be considered timely if made within five business days after the dispatch of the notice of the appointment of the Hearing Examiner and if received at least three business days prior to the commencement of the Hearing by the Hearing Examiner.

Section 125.880 Motions

Unless otherwise directed by the Hearing Examiner, motions shall be in writing and submitted to the Hearing Examiner and the adverse party prior to the Hearing. Where the Board is conducting a Hearing to determine the final disposition of the complaint, motions shall be received as directed by the Board.

Section 125.885 Consolidation and Severance of Claims: Additional Parties

In the interest of convenience, and the expeditious and complete determination of claims, the Hearing Examiner or the Board may consolidate or sever complaints involving any number of parties, and may order additional parties to be brought in pursuant to the provisions of Section 125.860.

Section 125.890 Amendments

Complaints may be amended under any of the following circumstances:

a) at the request of the General Counsel following the preliminary review referred to in Subsection a) of 125.830;

b) to correct any technical defects;

c) to conform to the evidence presented at the Hearing;

d) to conform to new matters that arise at the Hearing if it appears from the original and amended complaint that the cause of action asserted in the amended complaint grew out of the same transaction or occurrence.

Section 125.895 Pre-Hearing Conferences

a) At the request of the Hearing Examiner or either party and prior to the Hearing, the Hearing Examiner may direct the parties or their attorneys to appear at a

specified time and place for a conference, for the purposes hereinafter mentioned. The purposes for such conferences shall include:

1) the simplification of issues;

2) the necessity or desirability of amending the complaint;

3) the possibility of stipulations of fact;

4) the limitation of the number of witnesses;

5) such other matters that may aid in the simplification of the evidence and disposition of the proceeding.

b) In exercising such discretion, the Hearing Examiner shall give due consideration to the time requirements of Section 125.830(e).

Section 125.900 Settlement Pursuant to Conference

At any time prior to or during the Hearing, an opportunity shall be afforded all parties to dispose of the case by written stipulation, agreed settlement or consent order, unless otherwise precluded by law. Any stipulation, agreed settlement, or consent order shall be submitted in writing to the Board and shall become effective only if approved by the Board.

Section 125.905 Continuances

A Hearing may be continued for good cause by the Hearing Examiner upon his own motion or upon motion of a party to the Hearing after due consideration of any time limitations required by law or by this Subpart. Notice of any postponement or continuance shall be given to all parties at least 3 business days in advance of the previously scheduled Hearing date. All parties involved in a Hearing shall attempt to avoid undue delay caused by repetitive continuances so that the Hearing may be resolved expeditiously.

Section 125.910 Failure of Party to Appear

Failure of the Respondent to appear on the date set for a Hearing shall not deter the Hearing from proceeding unless the Hearing Examiner shall, for good cause, order a continuance. Failure of the Complainant to appear on the date set for Hearing without good cause shown, shall be grounds for dismissal of the complaint for want of prosecution.

Section 125.915 Evidence

a) Except with respect to matters of privilege, the rules of evidence as applied in civil cases in courts of this State shall not be strictly applied to Hearings under this Subpart. Admissibility of evidence shall be liberally interpreted in order to present all matters which are or may be relevant to the issues affecting the parties. Hearsay evidence shall be admissible if deemed to be reliable and trustworthy by the Hearing Examiner.

b) The Hearing Examiner shall exclude immaterial, irrelevant and repetitious evidence.

c) A party may conduct examinations or cross-examinations without rigid adherence to formal rules of evidence, provided the examination or cross-examination can be shown to be necessary and pertinent to a full and fair disclosure of the subject matters of the Hearing.

Section 125.920 Official Notice

Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge. The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of any evidence submitted by the parties.

Section 125.925 Subpoenas

a) Pursuant to Article 10 of the Illinois Administrative Procedure Act, and upon application to the Hearing Examiner by any party, or upon the request of the Hearing Examiner, the Board may authorize the General Counsel to issue a subpoena for attendance at the Hearing, which may include a command to produce documents or other tangible things designated therein that are reasonably necessary to resolution of the matter under consideration. The Hearing Examiner, upon motion, and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable or oppressive.

b) Every subpoena shall state the title of the action and shall command each person to whom it is directed:

1) to attend and give testimony at the time and place therein specified, and/or

2) to produce books, papers, documents or tangible things designated therein at the time and place therein specified.

c) A subpoena duces tecum may be limited to the production of documents and not require personal attendance of the person to whom it is directed.

d) The party requesting the issuance of a subpoena compelling personal attendance shall tender therewith a check reimbursing the witness for the round trip cost of travel between the witness's place of residence and the place where his presence is requested. Reimbursement shall be equal to that provided by the Governor's

Travel Board for reimbursement of State Employees traveling on official state business.

Section 125.930 Scope of Hearing – Procedures – Evidence

The Hearing is not an adjudication, nor does it need to be adversarial in nature. It is an inquiry to elicit evidence on the question of whether the complaint is well grounded in fact and law.

1) Any person offering evidence, written or oral shall affirm to the Hearing Examiner that his or her evidence is true to the best of his or her information and belief;

2) Evidence may be submitted in narrative form;

3) The Hearing Examiner shall not be bound to follow the rules of evidence used in an Illinois court of law, but may admit and rely upon for his recommendation such evidence or information of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

4) The Complainant will present his case first except when convenience to the Hearing Examiner or the Respondent requires the Respondent to proceed first. The Respondent will then present any information or evidence supporting his or her defense; and

5) The Hearing Examiner may ask the Complainant or Respondent any questions relevant to the allegations contained in the complaint.

At the close of the Hearing the Hearing Examiner shall summarize his conclusions concerning the evidence and information presented and draft a recommendation to the Board addressing the question of whether the complaint is well grounded in fact and law. The Hearing Examiner shall include any documents tendered to him or her during the Hearing and submit them with the recommendation to the General Counsel for his consideration. The General Counsel shall then present the recommendation and accompanying documentation to the Board for their final determination.
The official record of a Hearing shall consist of the transcript (or tape recording of the proceedings) copies of any motions submitted, documentary evidence, copies of all notices and the recommendation of the Hearing Examiner.

Section 125.935 Responsibilities of the General Counsel

a) Upon receipt of a copy of the recommendation of the Hearing Examiner, the General Counsel shall:

1) Review the recommendation and determine whether the facts support the recommendation and whether any questions of law have been properly applied.

2) Indicate in writing whether or not he concurs with the recommendation of the Hearing Examiner and if not, state the reasons therefore.

3) Transmit his remarks and recommendation to the Board within a reasonable time prior to the meeting at which the matter will be addressed by the Board.

b) If there is insufficient time between receipt of the Hearing Examiner's recommendation and the meeting at which the Board will dispose of the complaint, the General Counsel may give his recommendation orally.

Section 125.940 Board Determination

a) After the submission of the recommendation of the Hearing Examiner, the transcript (if requested by the Board), and the recommendation of the General Counsel, the Board shall make a final determination of whether the complaint was well grounded in fact and law. If the Board makes such a determination, and the Respondent is unwilling to take the necessary action to correct the matter or is unwilling to cease the conduct alleged in the complaint, the Board shall issue an order granting whatever relief it deems appropriate. If the Board determines that the complaint is not well grounded in fact and law, or is not properly before it as not alleging a violation of Title III of the Act, then the Board shall either dismiss the complaint, or refer it to the proper agency or department for their consideration.

b) The Board may consider and discuss the Hearing Examiner's recommendation through a conference telephone call begun in open session and continued in executive session in lieu of an in-person meeting, and such consideration and discussion shall be deemed part of the Hearing process. Any action on the Hearing Examiner's recommendations must be taken in open session, or if taken as part of the telephonic conference call, that portion of the conference call shall be broadcast over a speaker phone or other similar device at both the permanent and branch offices of the Board and that portion of the broadcast call be open to the media and public

Section 125.945 Alternative Dispute Resolution

If the State Board of Elections is not able to resolve the complaint within 90 days of its filing or if the complainant names the Board as Respondent and is not willing to waive the Board's jurisdiction pursuant to Section 125.130 or if the complainant refuses to waive the 90 day deadline, the Board shall refer the matter to a person, company or association providing dispute resolution services. The matter shall be resolved within 60 days of its referral. This time limitation shall be included in any contract for the provision of these services. The Board may accept suggestions from the parties as to whom the matter shall be referred to, however the Board shall have final authority in the selection process. Costs of the service shall be borne by the complainant. The record from any Hearings conducted under this Subpart shall be made available for use by the dispute resolution company chosen by the Board.

KENTUCKY

31 KAR 6:010. State-based administrative complaint procedure.

RELATES TO: KRS Chapter 13B, 117.015(1), 42 U.S.C. 15512

STATUTORY AUTHORITY: KRS 117.015(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties in the administration of the election laws. The Help America Vote Act of 2002, 42 U.S.C. 15512, Section 402(a), requires the establishment of a state-based administrative complaint procedures to remedy grievances in elections for federal offices. This administrative regulation establishes an administrative complaint procedure to remedy grievances in elections for federal offices.

Section 1. Definitions. (1) "Board" means the State Board of Elections or their designee as defined in KRS 117.015 and 117.025.

(2) "Complainant" means the person who files a complaint under this administrative regulation.

(3) "Federal election" means a primary, general, or special election at which a federal office appears on the ballot.

(4) "Presiding officer" means the person appointed by the board to conduct a hearing on a complaint.

(5) "Respondent" means any state or local election official whose actions are alleged, in a written complaint, to be in violation of Title III of the Help America Vote Act of 2002, 42 U.S.C. 15481.

(6) "State or local election official" means the Secretary of State, the State Board of Elections, a county clerk, a county board of elections, or any officer, agent, or appointee thereof.

(7) "Title III" means Title III of the Help America Vote Act of 2002, Pub.L. 107-252, codified at 42 U.S.C. 15481.

Section 2. Applicability. This administrative regulation shall be applicable to elections for federal office.

Section 3. Complaint Process. (1) Any person who believes there has been a violation of any provision of Title III of the Act by any election official may file a written complaint with the board.

(2) All complaints shall:

(a) Be limited to violations of the requirements placed upon the states by Title III, specifically:

1. Standards for voting systems;

2. Requirements for provisional voting and voting information; and

3. Requirements for computerized statewide voter registration lists and for voters who register by mail.

(b) Be in writing on the Complaint and Affidavit for Violation of Title III of the Help America Vote Act of 2002, and signed by the complainant under oath or affirmation before an officer authorized to administer oaths.

(c) Include the full name, address, and telephone number of the complainant.

(d) Include a description of the alleged violation sufficient to apprise the board and the respondent of the nature and specifics of the complaint.

(e) Be sent by mail or by delivery to the Offices of the State Board of Elections at 140 Walnut Street, Frankfort, Kentucky 40601.

(f) Be filed within ninety (90) days of the alleged violation of Title III.

Section 4. Processing the Complaint and Response. (1) The board may refuse to accept a complaint if the complaint does not comply with the requirements of Section 3 of this administrative regulation, except the board shall dismiss a complaint that does not state on its face a violation of Title III.

(2) If a complaint does not comply with Section 3 of this administrative regulation the board shall, within three (3) days, send the complainant a notice explaining the areas of noncompliance in the complaint.

(3) If a complaint complies with Section 3 of this administrative regulation and states on its face a Title III violation, the board shall accept the complaint and the complaint shall be deemed filed on the date of receipt at the offices of the board.

(4) Upon receipt of a complaint, the board shall send a copy to the respondent along with a request for a response.

(5) The respondent shall send a response to the board within ten (10) days of the date the respondent received notice from the board of the filed complaint.

(6) Upon receipt of the respondent's response, the board shall within three (3) days, send the complainant a copy of the respondent's response and a notice explaining the complaint may be resolved informally by agreement of the parties or a hearing may be requested. The complainant shall have ten (10) days from the date the notice is received to request an informal resolution or a hearing.

(7) The executive director of the board shall be responsible for arranging the date, time and place for hearings.

(8) The board may consolidate multiple complaints into a single proceeding if feasible and if the complaints arise out of the same fact situation and have common questions of law and facts.

(9) The board shall make a final determination of the complaint within ninety (90) days of the date the complaint is filed unless the complainant agrees in writing to an extension.

Section 5. Hearings. (1) Hearings shall be conducted in accordance with KRS Chapter 13B.

(2) Hearings shall be tape recorded and a transcript of the hearing shall not be made except upon request of a party who shall bear the cost of transcription. Any other party may request a copy of the transcript at their own expense.

(3) Hearings may be held and testimony taken by teleconference or video conference with notice to the parties.

(4) If any party fails, without good cause, to attend the hearing, they may be held in default and have a determination made against them.

(5) All testimony shall be taken under oath or affirmation.

(6) The complainant shall have the burden of proof.

Section 6. Final Determination. (1) If the presiding officer determines that there was a past, present, or potential violation of Title III, shall then the final determination shall set forth the facts of the violation, the specific violation of Title III, and provide a remedy.

(2) The remedy awarded shall be directed at the improvement of processes or procedures governed by Title III, consistent with federal and state law.

(3) The remedy provided shall not include money damages, costs, or attorney fees and shall be limited to bringing the election practice or election system complained of into compliance with Title III.

Section 7. Alternative Dispute Resolution. (1) If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint, and the complainant did not agree to an extension, then the complaint shall be referred to a review panel comprised of three (3) members of the board.

(2) The review panel shall issue a final determination on the complaint within sixty (60) days of the referral.

(3) The review panel shall make its determination on the record of the hearing conducted under this administrative regulation and shall not conduct any further proceedings.

(4) If the hearing was not conducted or completed, then the review panel shall conduct a hearing under this administrative regulation.

Section 8. Publication of Final Determinations. All final determinations shall be posted on the internet homepage of the board, www.kysos.com/Index/Main/elecdiv.asp, and retained in the permanent archival records of the board by attaching to the minutes of the monthly meeting of the board for the month the final determination was issued.

Section 9. Incorporation by Reference. (1) Complaint and Affidavit for Violation of Title III of the Help America Vote Act of 2002," SBE 21(12/03), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 p.m. (30 Ky.R. 1881; Am. 2134; eff. 4-12-2004.)

MASSACHUSETTS

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

950 CMR 56.00: ADMINISTRATIVE PROCEEDINGS CONCERNING PRACTICES OF LOCAL ELECTION OFFICIALS

Section

56.01: General Provisions
56.02: Complaint
56.03: Investigation; Consultation; Report
56.04: Decision
56.05: Enforcement

56.01: General Provisions

(1) Purpose. 950 CMR 56.00 provides procedures for the Secretary to decide whether a pattern of conduct or a standard, practice or procedure of a local official is contrary to the election laws, under M.G.L. c. 56, ' 60 and further provides an administrative complaint procedure in accordance with the requirements of Section 402 the Help America Vote Act of 2002. These provisions shall be construed to promote the fundamental right to vote and the uniform application of the election laws throughout the Commonwealth.

(2) Definitions. As used in 950 CMR 56.00:

Election Laws (as used in 950 CMR 56.00) and General or Special Law concerning administration of elections" (as used in M.G.L. c. 56, ' 60) include any provision of M.G.L. chs. 50 through 54, or of any other general or special law, including the provisions of the Help America Vote Act of 2002, 42 USC 15301, constitutional provision, or home rule charter concerning administration of elections, or of any regulation adopted under authority of any of the preceding provisions, or of any judicial or administrative decision interpreting any of the preceding provisions.

HAVA means the relevant provisions of the Help America Vote Act of 2002, 42 USC 15301, *et seq*.

Local Official includes one or more of a city or town clerk, election commission, board of registrars of voters, or any other municipal or district officer upon whom a duty is imposed by the election laws.

Secretary means the state secretary, or the state secretary's chief legal counsel or another attorney designated to act on the state secretary's behalf.

Urgent Circumstances shall be determined by the Secretary and include, but are not limited to, the time period on or near the day of a primary, caucus, or election, or of a deadline for voter registration or for filing or submitting any relevant document under the election laws.

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS
140 WALNUT STREET * FRANKFORT KY 40601-3240
(502) 573-7100

COMPLAINT AND AFFIDAVIT FOR VIOLATION OF TITLE III OF THE HELP AMERICA VOTE ACT OF 2002

Instructions:
a. For use of this form, see Administrative Regulation 31 KAR 3:010E.
b. Use of this form is limited to violations of Title III of the Help America Vote Act of 2002, Public Law 107-252, governing elections for federal office.
c. Title III places requirements on the states concerning voting system standards, provisional voting, voting information requirements, computerized statewide voter registration list requirements, and requirements for voters who register by mail.
d. If this document is incomplete or if your complaint fails to state a violation of Title III, it shall not be acceptable for filing.
e. The complaint shall be filed with the State Board of Elections within ninety days of the alleged violation.

Section 1: Please state under oath or affirmation and in legible writing your full name, physical address, mailing address, and telephone number. If you do not have an address or telephone number, please so state and explain the best way to contact you.

Name (Please Print)			
Residential Address			
Mailing Address (If different)			
City/State/Zip			
Telephone Number	( )		

Section 2: Please state in writing under oath or affirmation in your own words why you believe a violation of Title III of the Help America Vote Act of 2002 has occurred, is occurring, or is about to occur. State a description of the alleged violation sufficient to apprise the Board and the respondent of the nature and specifics of the complaint below and attach additional sheet if more space is needed.

Section 3: Please state what you want done about the violation to bring the election system or election process into compliance with Title III of the Act. Attach additional sheet if more space is needed.

_____
Signature of Complainant

Subscribed and sworn to or affirmed before me by _____, who personally appeared before me on _____ day of _____ 20 ____.

My Commission Expires: _____ 20 ____.

_____
Notary Public State at Large

SBE 21 (12/03)

White & canary copies: State Board of Elections
Pink copy: Complainant

(3) Amendment. 950 CMR 56.00 may be amended at any time in the manner provided by law. Any interested person may petition the Secretary requesting the adoption, amendment, or repeal of any regulation, under M.G.L. c. 30A, ' 4. This petition shall be considered by the Secretary within 30 days after filing.

56.02: Complaint

Any person may complain to the Secretary that a pattern of conduct, or a standard, practice or procedure, of a local election official is contrary to the election laws. Additionally, a person may complain to the Secretary, in accordance with the provisions of Section 402 of HAVA, that Title III has been violated, is being violated or is about to be violated.

(1) Complaints need not use the language or refer to the relevant provision of the election laws, nor M.G.L. c. 56, ' 60, nor 950 CMR 56.00. The complaint shall be in writing, except in urgent circumstances. The Secretary=s office may initiate a complaint.

56.02: continued

(2) Complaints filed in accordance with Section 402 of HAVA, must be in writing and notarized.

(3) Any complaints must be made to: Elections Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, MA 02108

56.03: Investigation; Consultation; Report

(1) The Secretary shall assign any complaint to an investigator, who shall be an employee of the Secretary=s Elections Division.

(2) The investigator shall investigate the complaint=s allegations under the supervision of the Secretary or his designee and with the assistance of other employees of the Secretary=s Elections Division.

(3) The investigator shall consult with the local election official complained of, by informing the local election official of the substance of the complaint and requesting a response.

(4) The investigator, after review by the Secretary or his designee, may decide that the complaint is without basis, is outside the Secretary=s jurisdiction, or fails to state a claim upon which relief can be granted, and shall so inform the local election official and the complainant in writing.

(5) The investigator shall then prepare a report, including the results of this consultation, and shall present this report to the Secretary.

(6) The report may recommend an informal resolution or the text of an order. Except in urgent circumstances, the report shall be in writing and shall be sent to the local official and to the complainant, who may file their written comments on it with the Secretary within ten days after the report was sent.

56.04: Decision

(1) After reviewing the report and any written comments, the Secretary may render a decision which may incorporate the report in whole or in part. The Secretary may hold an informal conference before rendering a decision.

(2) Before a decision is rendered, hearings may be held. The parties shall include the local official, the Secretary=s investigator, and any complainant who wishes to participate.

(a) After reviewing the report and any written comments, and before rendering a decision, the Secretary may initiate an adjudicatory proceeding by issuing an order to show cause to the local election official under 801 CMR 1.01(6)(d).

1. The decision whether or not to hold an adjudicatory hearing shall be in the Secretary=s unreviewable discretion.

2. An adjudicatory hearing shall be before the Secretary and shall be governed by 801 CMR 1.01, except as the Secretary may modify these rules because of time restraints.

(b) For complaints filed in accordance with Section 402 of HAVA, the complainant may request a hearing on the record.

1. Decisions on complaints filed in accordance with Section 402 of HAVA shall be made within 90 days from the date the complaint is filed, unless the complainant consents to a longer period for making such decision.

2. If a decision is not made within 90 days as set forth above, the matter shall be referred to the Massachusetts Office on Dispute Resolution for further proceedings.

(c) After any hearing, the Secretary shall render a decision.

56.04: continued

(3) The Secretary's decision shall be in writing, shall state the reasons for the decision, and may include an order to the local official to comply with the relevant provisions of the election laws. It shall be mailed to the local official and to the complainant. In urgent circumstances, it shall also be delivered by hand to the local official or communicated by telephone to the local official.

(4) Before issuing any order to comply with law, the Secretary shall notify the Attorney General or an assistant attorney general designated by the Attorney General for this purpose.

(5) The Secretary's order may require that the local official sign an affidavit giving assurances that the local official will obey the order.

56.05: Enforcement

The Secretary may notify the Attorney General of any local official's failure to obey an order. The Attorney General may enforce the order by civil action.

REGULATORY AUTHORITY

950 CMR 56.00: M.G.L. c. 56, ' 60.

Mississippi

Secretary of State's Regulation Creating An Administrative Complaint Procedure in Compliance with the Help America Vote Act of 2002

I. Authorization. Title IV §402(a)(2) of the Help America Vote Act of 2002 (HAVA), Public Law 107-252, 42 U.S.C. §§15481 to 15502, inclusive, mandates that states implement an administrative complaint procedure for enforcement of Title III of HAVA.

II. Scope. This rule provides a uniform, nondiscriminatory procedure for the resolution of any complaint in any federal, state, or local election alleging a violation of any provision of Title III of HAVA, including violations that have occurred, are occurring or are about to occur.

III. Definitions. In this rule the following terms have the following meanings:

A. "Complainant" means the person who files a complaint with the Secretary of State pursuant to sections IV, V and VI of this rule.

B. "Respondent" means any state or local election official or board against whom a complaint is filed pursuant to sections IV, V and VI of this rule.

C. "Title III" means Title III of HAVA, Public Law 107-252, 42 U.S.C. §15481-15485.

D. "State or local election official" means the Secretary of State, the State Board of Election Commissioners, a circuit or municipal clerk, a county or municipal election commissioner or election commission, the state or local political party executive committee or executive committee member, a poll manager or any employee, officer, agent or appointee thereof.

IV. Who May File. Any person who believes that a violation of Title III of HAVA has occurred, is occurring or is about to occur may file a complaint.

V. Form of Complaint.

A. Writing and Notarization. A complaint filed pursuant to section IV shall be in writing and notarized, signed and sworn to by the Complainant. The complaint must also provide the name of each respondent and contain a concise statement of the facts alleged to violate Title III of HAVA.

B. Prescribed Form. The Complainant must use the form prescribed by the Secretary of State or his designee, which is available from the Secretary of State's Office or from any state or local political party executive committee, local election commission or circuit or municipal clerk, or which may be downloaded from the Secretary of State's website at www.sos.state.ms.us;

VI. Place, Time and Method for Filing; Copy for Respondent.

A. Place for Filing. A complaint shall be filed with the Secretary of State's Office, Elections Division, 401 Mississippi Street, Jackson, Mississippi 39201.

B. Time for Filing. A complaint shall be filed within 30 days after the occurrence of the actions or events forming the basis of the complaint or after the complainant knew, or with the exercise of reasonable diligence, should have known of the action or event forming the basis for the complaint. The deadline for filing any complaint may be extended an additional 30 days in the discretion of the Secretary of State or his designee upon presentation of evidence by the Complainant that the Respondent concealed the actions or events forming the basis of the complaint.

C. The complaint shall be delivered to the Secretary of State's Office by hand-delivery or by overnight service to 401 Mississippi Street, Jackson, Mississippi 39201, or by mail to Post Office Box 136, Jackson, Mississippi 39205. A complaint shall be deemed filed upon receipt by the Secretary of State's Office and not upon mailing or postmark.

D. Copy for Respondent. For filing to be deemed complete, the Complainant shall mail or deliver a copy of the complaint to each Respondent not later than the date on which the complaint is filed and submit proof of such delivery to the Secretary of State.

VII. Processing of Complaint.

A. Consolidation. The Secretary of State or his designee may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact. The Secretary of State or his designee shall notify all interested parties if two or more complaints have been consolidated.

B. Record.

1. The Secretary of State or his designee shall compile and maintain an official record in connection with each complaint filed pursuant to this rule.

2. The official record shall contain:

a. A copy of the complaint, including any amendments made to it with the permission of the Secretary of State or his designee;

b. A copy of any written submission by the Complainant;

c. A copy of any written response by the Respondent or other interested person;

d. A written report of any inquiry conducted by employees of the Secretary of State's Office or of any other state or local election officials who may not be directly involved in the actions or events complained of and may not directly supervise or be directly supervised by any Respondent;

e. Copies of all notices and correspondence to or from the Secretary of State or his designee in connection with the handling of the complaint;

f. Originals or copies of any tangible evidence produced at any hearing conducted under this rule;

g. The original tape recording produced at any hearing conducted under this rule; and

h. A copy of any final determination made under this rule.

C. The Secretary of State or his designee will review each complaint filed pursuant to sections IV, V and VI of this rule to determine whether the complaint: (a) states a violation of Title III of HAVA; and (b) complies with the other requirements of sections IV, V and VI of this rule.

D. If a complaint fails to state a violation of Title III of HAVA or does not comply with other requirements of sections IV, V and VI of this rule, then the Secretary of State or his designee shall dismiss the complaint without further action and notice of the dismissal will be provided to the complainant.

E. Except as otherwise provided in subsection F section VII of this rule, a complainant whose complaint has been dismissed pursuant to this section may re-file the complaint within the time set forth in section VI (b) of this rule.

F. A complainant whose complaint has been dismissed for failure to state a violation of Title III of HAVA may re-file the complaint only one time.

G. The Secretary of State or his designee may, upon agreement of all the parties, resolve the complaint informally, and issue a final determination, without a formal proceeding.

H. The Secretary of State or his designee may require the parties to submit written briefs on any of the issues involved in the complaint.

VIII. Hearing. If requested by the Complainant in his complaint or so ordered by the Secretary of State or his designee, and the complaint has not been dismissed pursuant to section VII(D) or informally resolved pursuant to section VII(G) of this rule, the Secretary of State or his designee will schedule a hearing that shall proceed as follows:

A. The hearing may be conducted without adherence to requirements of the Mississippi Rules of Civil Procedure or the Mississippi Rules of Evidence.

B. The hearing shall be conducted no sooner than 10 days and no later than 30 days after receipt by the Secretary of State's Office of a complaint containing a request for a hearing and shall be set by the Secretary of State or his designee. The Secretary of State or his designee shall give at least 5 days' advance notice of the date, time and place of the hearing:

1. By mail to the Complainant, each Respondent (to the addresses set out in the complaint and response) and any other interested person who has asked the Secretary of State in writing to be advised of the hearing;

2. On the Secretary of State's website (www.sos.state.ms.us); and

3. By posting in a prominent place, available to the general public, at the Secretary of State's Office.

C. The Secretary of State or his designee shall act as hearing officer.

D. The Complainant, any Respondent or any other interested member of the public may appear at the hearing and testify under oath or present relevant evidence in connection with the complaint. The hearing officer may limit the testimony, if necessary, to ensure that all interested persons are able to present their views. The hearing officer may recess the hearing and reconvene at a later date, time and place publicly announced at the hearing. In the case of consolidated complaints, the hearing officer may require the Complainants and/or Respondents to designate a single representative party to advocate for the consolidated group of Complainants and/or Respondents at the hearing.

E. In the discretion of the hearing officer, the hearing may be held via conference telephone call or video teleconferencing. In such a case, the notice shall so state and provide for technical details.

F. The proceedings shall be tape recorded by and at the expense of the Secretary of State. The recording shall not be transcribed as a matter of course and any party or interested person may obtain a copy of the tape at its own expense. If a transcript is obtained, a copy of it shall be filed as part of the record and any interested party may examine it.

G. If the Complainant fails to appear at the hearing, the complaint shall be dismissed with prejudice.

H. Cross-examination at the hearing will be permitted only at the discretion of the hearing officer, but a person may testify or present evidence at the hearing to contradict any other testimony or evidence presented at the hearing. If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence presented subsequently, that person is entitled to be heard again only at the discretion of the hearing officer who may authorize the person to provide an oral or written response, or both.

I. Any party to the proceeding may file a written brief or memorandum with the hearing officer not later than 5 business days after the hearing's conclusion. The party shall serve a copy of any such written brief or memorandum on all other parties no later than the time the written brief or memorandum is filed with the hearing officer. No responsive or reply memorandum to such a brief or memorandum will be accepted without the specific authorization of the hearing officer.

IX. Determination. A final determination on the complaint shall be made within 90 days of the Secretary of State's receipt of the complaint and must be in writing. This time period may only be extended on the written consent of the Complainant.

A. The determination as to whether a Title III violation has been established shall be based on the preponderance of the evidence standard. The burden of proving by a preponderance of the evidence that a Title III violation exists shall be on the Complainant.

B. The determination shall constitute a final and binding decision which is not appealable to any state or federal court.

C. If it is found that there was a past, present or potential violation of Title III of HAVA, then the written determination shall state the facts of the violation, set forth the specific law violated and provide for a remedy. The remedy provided shall be directed to the improvement of processes or procedures governed by Title III. The principal remedy shall be written findings that a violation occurred and strategies or recommendations for ensuring that future violations do not occur.

D. Any remedy provided for under this rule may not include any award of monetary damages, the payment of costs, penalties or attorneys fees and may not include the invalidation of any vote, ballot, primary, special or general election result or the disqualification of any candidate.

E. All final determinations shall be posted on the website of the Secretary of State (www.sos.state.ms.us) and mailed to the Complainant, each Respondent and other interested persons who asked in writing to be advised of the final determination.

X. Alternative Dispute Resolution.

A. The Secretary of State may, by written order, refer this matter at any time for alternative dispute resolution. In addition, if the Secretary of State or his designee does not render a final determination on a complaint filed under this rule within 90 days after the complaint is filed, or within any extension period to which the complainant has consented, the Secretary of State or his designee will, on or before the 5th business day after the final determination was due to be issued, by order initiate alternative dispute resolution. A copy of this order shall be provided to the Complainant and the Respondent.

B. The Secretary of State shall maintain a list of approved arbitrators to be used in these proceedings and from which arbitration panel members must be selected.

C. The written order of provided for in section X(A) of this rule shall designate an arbitrator to serve on a panel to resolve the complaint. Within 3 business days after the Complainant receives this designation, the Complainant shall designate in writing to the Secretary of State the name of a second arbitrator. No later than 3 business days after designation by the Respondent of the second arbitrator, the two arbitrators so designated shall select a third arbitrator, to complete the panel.

D. As an alternative to the procedure set out in subsection C, the Secretary of State may retain a single, independent, professionally qualified person to act as an arbitrator, if the complainant consents in writing to his appointment as the arbitrator at the time of his appointment.

E. The arbitrator or arbitration panel may review the record compiled with the complaint, including the tape recording or any transcript of a hearing, if a hearing was requested and held, and any written or documentary evidence compiled by the Secretary of State's Office. The arbitrator or panel may request that the parties present additional briefs or memoranda. The arbitrator or panel may conduct the hearing as prescribed in VIII of this rule if no such hearing was held.

F. The arbitrator, or arbitration panel by majority vote, shall determine the appropriate resolution of the complaint by majority vote.

G. The arbitrator or panel shall issue a written resolution within 60 days after the issuance of the written order required in section X(A) of this rule, which period shall not be extended. The final resolution shall be transmitted to the Secretary of State and shall be the final resolution of the complaint. The Secretary of State shall mail the final resolution of the arbitrator or panel to the Complainant, each Respondent and any other interested person who has asked in writing to be advised of the final determination. It shall also be published on the Secretary of State's website at www.sos.state.ms.us.

H. The final determination of the arbitrator or arbitration panel is binding upon all the parties involved in the dispute and shall not be subject to appeal to any state or federal court.

Rules of
Elected Officials
Division 30—Secretary of State
Chapter 12—Grievance Procedures

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 12—Grievance Procedures

15 CSR 30-12.010 Statewide HAVA Grievance Procedure

PURPOSE: This rule describes the procedure for the filing of an administrative complaint to remedy grievances concerning a violation of Title III of the Help America Vote Act of 2002.

(1) Any person who believes that there is a violation of any provision of Title III of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15481 through 15485, (including a violation that has occurred, is occurring, or is about to occur), may file a complaint with the Elections Division of the Office of the Secretary of State.

(2) Any complaint filed under this rule must be written, signed, and sworn to before a notary public commissioned by the state of Missouri.

(3) Any complaint filed under this rule must be filed within thirty (30) days of the certification of the election in which the violation is alleged to have occurred.

(4) The complaint filed under section (1) of this rule shall state the following:

(A) The name and mailing address of the person or persons alleged to have committed the violation of Title III of HAVA described in the complaint;

(B) A description of the act or acts that the person filing the complaint believes is a violation of a provision of Title III of HAVA; and

(C) The nature of the injury suffered (or is about to be suffered) by the person filing the complaint.

(5) The Elections Division shall promptly provide a copy of the complaint by certified mail to:

(A) All persons identified as possible violators of the provisions of Title III of HAVA; and

(B) The election authority in whose jurisdiction the violation is alleged to have occurred.

(6) The Elections Division may consolidate complaints filed under this rule.

(7) Once a complaint has been properly filed under this rule, the secretary of state shall appoint a presiding officer who shall conduct an investigation of the complaint.

(8) At the request of the person filing the complaint, or if the presiding officer believes that the circumstances so dictate, the presiding officer shall conduct a hearing on the complaint and prepare a record on the hearing, such hearing to be conducted within ten (10) days of the request of the person filing the complaint.

(9) The presiding officer, upon completing the investigation, shall submit the results to the Elections Division, which shall then issue a written report. The Elections Division shall provide a copy of the report by certified mail to:

(A) The person who filed the complaint;

(B) The person or persons alleged to have committed the violation; and

(C) The election authority in whose jurisdiction the violation was alleged to have occurred.

(10) The report described in section (8) of this rule shall:

(A) Indicate the date when the complaint was received by the Elections Division;

(B) Contain findings of fact regarding the alleged violation and state whether a violation of Title III of HAVA has occurred;

(C) State what steps, if any, the person or persons alleged to have committed the violation has taken to correct the violation and/or to prevent any reoccurrence;

(D) Suggest any additional measures that could be taken to correct the violation;

(E) Indicate the date a violation was corrected or is expected to be corrected; and

(F) Provide any additional information or recommendations useful in resolving the complaint.

(11) If the Elections Division determines that there is a violation of any provision of Title III of HAVA, the Elections Division shall determine and provide the appropriate remedy, if authorized to do so. If the Elections Division determines that it is not authorized by law to provide the appropriate remedy, the Elections Division shall, if possible, refer the matter to the appropriate agency or office that has jurisdiction.

AUTHORITY: section 28.035, RSMo Supp. 2003. Original rule filed Sept. 19, 2003, effective May 30, 2004.*

**Original authority: 28.035, RSMo 2003.*

NEW HAMPSHIRE

I. Filing a Complaint

a. Anyone may report alleged violations of State or Federal election laws subject to enforcement by the Attorney General by submitting a completed Election Law Complaint Form.

b. The Election Law Complaint Form shall:

(1) Be written legibly and signed by the complainant;
(a) If the complaint relates to a violation of a right established by Title III of the Help America Vote Act of 2002, the complaint must be sworn to by the complainant in front of a Notary Public or Justice of the Peace.

(b) The Attorney General's Office and the Secretary of State's Office will provide Notary Public or Justice of the Peace services for an Election Law Complaint Form free of charge. Town Clerks, City Clerks, and other public officials who are Notaries Public or Justices of the Peace are encouraged to provide their services free of charge for the purpose of filing an Election Law Complaint Form.

(2) Contain a statement that an election official, a town/city/village district, a candidate, a political committee, an individual, or a corporation has violated a State election law or Federal election law subject to enforcement by the Attorney General and, if known, the requirement, statute, or regulation that has been violated;

(3) Contain a statement of the facts on which the complaint is based;

(4) Allege a violation that occurred not more than one year prior to the date the complaint is being submitted, unless a longer period is reasonable because the violation is continuing; and

(5) Identify by name, address, and phone number any known witnesses or other victims.

c. Any written communication satisfying the requirements set forth above shall constitute a complaint for the purposes of these procedures.

d. Complaints shall be mailed, faxed, or delivered to:

Attorney General
Civil Bureau
33 Capital Street
Concord, NH 03301
Fax (603) 271-2110

e. Complaints shall be considered filed on the date that they are received at the Attorney General's Office.

II. Investigation

a. The Attorney General or his designee will evaluate each complaint.
(1) If the complaint does not state a violation of any State or Federal election law subject to enforcement by the Attorney General, the complainant and the subject(s) of the complaint shall be notified in writing.

(2) If the complaint alleges a violation of any State or Federal election law subject to enforcement by the Attorney General, an inquiry shall be initiated.

b. Unless the nature of the allegation makes doing so inappropriate, an initial step in the inquiry will be to notify the subject of the complaint and afford the subject an opportunity to provide a response to the complaint.

c. The Attorney General's Office will publicly neither confirm nor deny the receipt of a complaint nor the existence of an investigation, unless doing so is deemed necessary to gather information or alert the public to a preventable hazard.

d. If the subject of the complaint elects to provide a response, upon receipt of the response, the complaint and response will be evaluated to determine if an investigation is necessary to resolve the complaint.

e. Complaints shall be resolved in one of the following ways:

(1) Criminal Prosecution - If a criminal penalty exists for the election law violation and the evidence and circumstances warrant criminal prosecution, the Attorney General, directly or through a County Attorney or Police Prosecutor, will prosecute the alleged offender.

(2) Civil Prosecution - If a civil penalty exists for the election law violation and the evidence and circumstances warrant imposition of a civil penalty, the Attorney General will pursue imposition of a civil penalty in accordance with applicable law.

(3) Cease and Desist Order - If the election law authorizes the Attorney General to issue a Cease and Desist Order and the evidence and circumstances warrant issuance of a Cease and Desist Order, the Attorney General will pursue issuance of a Cease and Desist Order in accordance with applicable law.

(4) Written Warning - If the election law does not provide for any penalty or if the evidence and circumstances support a conclusion that wrongdoing occurred, but the evidence and circumstances do not support or warrant a criminal prosecution, a civil penalty, or a cease and desist order, the Attorney General will issue a written warning if warranted.

(5) Closure Letter with Recommendations - If the evidence and circumstances do not warrant any of the above actions, but the Attorney General concludes that the subjects of the complaint failed to follow recommendations issued by the Secretary of State or the Attorney General or recognized best practices, the Attorney General may issue a Closure Letter to the subject of the complaint with recommendations for best practices.

(6) Closure Letter, Complaint Unfounded. If the evidence and circumstances support the conclusion that the subject of the complaint did not violate any election laws and followed the published recommendations of the Secretary of State and the Attorney General, the Attorney General will issue a Closure Letter declaring the complaint unfounded.

f. If the complaint involves a violation of a right established by Title III of the Help America Vote Act and the Attorney General determines that the complaint will be resolved by a criminal prosecution or civil penalty, the complainant shall be notified and afforded an opportunity to attend any public court sessions held to resolve the complaint.

g. If the complaint involves a violation of a right established by Title III of the Help America Vote Act and the Attorney General determines that the complaint will be resolved by a Cease and Desist Order, a Written Warning, Closure Letter with Recommendations or Closure Letter Complaint Unfounded, the complainant shall be issued a copy of the closure letter.

h. The complainant and the subject of the complaint shall have a right to request a hearing on the record before a hearing officer appointed by the Attorney General. The purpose of the hearing will be to afford the complainant, the subject, and the Assistant Attorney General who handled the matter to present evidence and arguments supporting resolution or arguing for an alternative resolution.

III. Hearing Process

a. Notice - The complainant or the subject of the complaint must file a written notice challenging the resolution with the Attorney General within 30 days of the date on which the documents announcing the resolution of the complaint are issued.

b. The Attorney General shall appoint a hearing officer who shall be a senior member of the Attorney General's Office who was not previously involved in any way in the investigation of the complaint, or a private attorney.

c. The Hearing Officer shall schedule a hearing within 30 days of the receipt by the Attorney General's Office of the written request for a hearing.

d. The Hearing Officer shall issue a notice of hearing that includes:

(1) Parties names and addresses;

(2) Date, time, and location of hearing;

(3) Statute(s) in question;

(4) A copy of the Cease and Desist Order, Written Warning, Closure letter with Recommendations or Closure letter concluding the matter was unfounded;

(5) A copy of the notice filed challenging the resolution;

(6) The consequence for failure to appear at the hearing as prescribed below; and

(7) The right of the parties to be represented by counsel at the hearing at their own expense.

e. The Hearing Officer shall issue a recommendation to the Attorney General either proposing a different resolution or affirming the previously issued resolution.

f. Hearing Record -

(1) The Attorney General shall cause the hearing to be recorded verbatim, and the recordings shall become part of the record.

(2) The Hearing Officer shall include in the record any documents submitted, and accepted as relevant, by the parties during the hearing

g. Procedural Rules - The hearing shall be conducted in conformance with Administrative Rules Chapter JUS 800.

h. Burden - Unless otherwise specified by law, the burden of proof shall be on the party challenging the original resolution.

i. Adjournment, Postponement, or Continuance - Adjournment, postponement, or continuance shall be directed, granted, or ordered for good cause shown, which shall include prejudice due to the inability of counsel or a critical witness to attend unless such inability is due to action or inaction on the part of the party. Notice of adjournment, postponement, or continuance shall be sent to all affected parties.

j. Failure to Request Continuance or Postponement, or to Appear - Failure to appear at any scheduled hearing, or to request for good cause a postponement or continuance of the hearing in advance thereof, shall be deemed to be a withdrawal of the complaint or waiver of right to be heard, as the case may be, and the challenge shall be closed, dismissed or a decision rendered.

k. Resolutions of complaints shall be made no later than 90 days from the receipt of the complaint (as required by 42 U.S.C. §15512(a)(2)(H)), unless the complainant has agreed to an extension.

l. If the complaint is not resolved in 90 days, upon receipt of a written request from the complaint the matter shall be submitted to the Ballot Law Commission.

IV. Complaint Form

ELECTION LAW COMPLAINT FORM
State of New Hampshire

Use this form to report a violation of Title III of the Help America Vote Act of 2002, or any New Hampshire Election laws

COMPLAINANT INFORMATION

Name _____ Home Phone _____ Work Phone _____

Address _____ County _____ Cell Phone _____

City _____ State _____ Zip Code _____

Email Address _____

PERSON, CANDIDATE, POLITICAL COMMITTEE, ELECTION OFFICIAL, TOWN, CITY, OR WARD AGAINST WHOM COMPLAINT IS BROUGHT

Name _____ Home Phone _____ Work Phone _____

Address _____ County _____ Cell Phone _____

City _____ State _____ Zip Code _____

Email Address _____

STATEMENT OF FACTS

Location of Violation _____

Date and Time of Violation _____

Please explain the basis for your complaint. If necessary, attach additional sheets.

_____

_____

_____

_____

Names and phone numbers of witnesses or other victims: _____

_____

_____

State or Federal Statute you believe was violated (if known) _____

SIGNATURE

By signing and filing this complaint, you are stating under penalty of law that the information you are providing is true and correct to the best of your knowledge.

Signature _____ Date _____

Below For *Federal Title III* Complaints ONLY:

THE STATE OF NEW HAMPSHIRE

_____, ss

On the _____ day of _____, 20__ before me, _____ *(Print name of Notary Public/Justice of the Peace)*, the undersigned officer, appeared _____, *(Print name of person whose signature is being notarized)* (known to me) (or satisfactorily proven)*(circle one)* to be the person whose name appears above, and s/he subscribed his/her name to the foregoing complaint and swore that the facts contained in this Affidavit are true to the best of his/her knowledge and belief.

_____

Notary Public/Justice of the Peace

My Commission expires: _____ *(seal)*

NEW JERSEY

C.19:61-6 Filing of complaint, procedure in Division of Elections, alternative procedure.

6. a. After January 1, 2004, any individual who believes that there is, has been, or will be a violation of any provision of Title III of Pub.L.107-252 (42 U.S.C. 15481 et seq.) may, pursuant to the procedures set forth in this section established in compliance with the provisions of section 402 of P.L.107-252 (42 U.S.C. 15512), file a complaint with the Division of Elections in the Department of Law and Public Safety seeking appropriate relief with respect to the violation.

b Each such complaint shall be in writing, and shall be notarized, signed, and sworn by the individual filing the complaint. The Attorney General may consolidate all such complaints if the Attorney General deems it appropriate.

c. (1) If, upon administrative inquiry, the Attorney General determines that there is, has been, or will be a violation of any provision of Title III of Pub.L.107-252 (42 U.S.C. 15481 et seq.), the Attorney General shall order appropriate relief. The complainant may request a hearing on the record, to be conducted in the manner provided for contested cases pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); otherwise, the order of the Attorney General shall constitute final agency action on the matter and shall be subject to judicial review as provided in the Rules of Court.

(2) If, upon administrative inquiry, the Attorney General determines that there has been, is or will be no violation of any provision of Title III of Pub.L.107-252 (42 U.S.C.15481 et seq.), the Attorney General shall reject the claim of the violation and shall so notify the complainant. In that case, the complainant shall be afforded the opportunity for a hearing on the record in the manner provided for contested cases pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Intervention in this hearing by any other person shall be as provided in the "Administrative Procedure Act." After review of the record of the hearing and the recommendation of the administrative law judge, the Attorney General shall affirm, reject or modify the decision. If, after a hearing, the Attorney General determines that there has been, is or will be a violation of any provision of Title III of Pub.L.107-252 (42 U.S.C. 15481 et seq.), the Attorney General shall order appropriate relief. If the complainant does not request a hearing following a determination of no violation based upon administrative inquiry or if the Attorney General determines after a hearing that there has been, is or will be no violation of any provision of Title III of Pub.L.107-252 (42 U.S.C. 15481 et seq.), the Attorney General shall dismiss the complaint and publish the results of the procedures. The decision of the Attorney General shall constitute final agency action on the matter, and shall be subject to judicial review as provided in the Rules of Court.

d. All complaints filed under this section shall be resolved finally by the Attorney General prior to the 90th day after the date that the complaint was filed, unless the complainant consents to a longer period for making such a determination.

e. If the Attorney General fails to meet the 90-day deadline provided in subsection d. of this section, the complaint shall be resolved within 60 days of that deadline under alternative dispute

resolution procedures established by the Attorney General for the purpose of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

f. All of the procedures provided for by this section shall be applied uniformly and not in a manner that discriminates in any way against an individual based on that individual's gender, race, religion, ethnicity or sexual orientation.

g. An individual who believes that there is, or has been, or will be a violation of any provision of Title III of Pub.L.107-252 (42 U.S.C. 15481 et seq.) may, as an alternative to the procedures prescribed in subsections a. through f. of this section, file a complaint in the appropriate Superior Court seeking appropriate relief with respect to the violation. The complaint shall be resolved in an expedited manner.

New Mexico

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 18 ADMINISTRATIVE COMPLAINT PROCEDURE

1.10.18.1 ISSUING AGENCY: Office of the Secretary of State
[1.10.18.1 NMAC – N, 03-15-2004]

1.10.18.2 SCOPE: This rule applies to any statewide special election, general election, primary election, county-wide election or election to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).
[1.10.18.2 NMAC - N, 03-15-2004]

1.10.18.3 STATUTORY AUTHORITY: Election Code, Section 1-2-1 NMSA 1978, Section 1-2-2.1 NMSA 1978, Public Law 107-252, The Help America Vote Act of 2002. The issuing authority shall adopt rules for an administrative procedure for hearing complaints on violations of Title III of the Help America Vote Act of 2002, including provisions relating to voting system standards, provisional voting procedures, voter registration procedures and operational standards of the statewide voter registration system.
[1.10.18.3 NMAC - N 03-15-2004]

1.10.18.4 DURATION: Permanent
[1.10.18.4 NMAC - N, 03-15-2004]

1.10.18.5 EFFECTIVE DATE: March 15, 2004 unless a later date is cited at the end of a section.
[1.10.18.5 NMAC - N, 03-15-2004]

1.10.18.6 OBJECTIVE: The Election Code (Section 1-1-1 through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003. The purpose of the amendment is compliance with the provisions of PL 107-252, effective October 29, 2002, which requires New Mexico to establish a state-based administrative complaint procedure to remedy grievances under Title III of the Help America Vote Act.
[1.10.18.6 NMAC - N, 03-15-2004]

1.10.18.7 DEFINITIONS: Unless otherwise defined below, the terms used in these procedures share the same definitions and meanings as the HAVA Act.

A. **"Administrative procedures"** means the procedures stated in this rule. These procedures will be available in alternative languages and formats.

B. **"Bureau"** means the New Mexico secretary of state's bureau of elections.

C. **"Complaint form"** means a template form created by the bureau that will be available in hard copy in county clerk's offices. A copy will also be made available by mail and available on the office of the secretary of state's website.

D. **"HAVA"** means the Help America Vote Act of 2002 (Public Law 107-252).

E. **"HAVA Title III"** means the section of Public Law 107-252 titled "Uniform and Nondiscriminatory Election Technology and Administration Requirements".

F. **"HAVA Title III violation"** means an act contrary to a party's statutory rights regarding voting systems standards, provisional voting procedures, voter registration procedures, and operational standards of the statewide voter registration system as found in NMSA 1978, Section 1-2-2.1 and HAVA Title III. It does not mean non-Title III election law matters, such as a candidate's ballot access or campaign reporting requirements.
[1.10.18.7 NMAC - N, 03-15-2004]

1.10.18.8 INITIATING A COMPLAINT:

A. Any person who believes a HAVA Title III violation has occurred, is occurring, or is about to occur may file a written complaint, on the bureau's complaint form, that states the name of the alleged violator and a specific description of the alleged HAVA Title III violation.

B. The complaint must be signed and sworn or affirmed by the complainant and it must be notarized.

C. The complainant may check a box on the complaint requesting an on-the-record hearing or no hearing.

D. If the bureau determines that the complaint is incomplete, the bureau shall promptly notify the complainant who may be permitted to amend the complaint, in the sole discretion of the bureau.

E. If the bureau receives duplicative or repetitive complaints, the bureau may consolidate these for assessment, investigation and resolution purposes.

[1.10.18.8 NMAC - N, 03-15-2004]

1.10.18.9 INVESTIGATION OF A COMPLAINT:

A. The bureau shall aspire to complete an initial investigation within thirty (30) days of the bureau's receipt of the complaint. If the complaint is made against the bureau, a representative of the district attorney shall aspire to complete an initial investigation within the same time period.

B. The investigation may include the following steps as deemed appropriate under the circumstances: sending an acknowledgement letter to the complainant; seeking a response from the election official against whom a complaint is made; providing the complainant with a copy of any response received from the election official against whom a complaint is made and give the complainant an opportunity to reply; engaging in informal resolution with the parties through a meeting, teleconference, or other means; or dismissing the complaint based on its clear failure to allege a Title III violation.

C. All written documents that are part of these administrative procedures, including the investigation, are public documents unless otherwise provided by law.

[1.10.18.9 NMAC - N, 03-15-2004]

1.10.18.10 HEARING ON A COMPLAINT:

A. If the complainant requests a hearing and the bureau does not dismiss the complaint, the bureau will appoint a hearing officer to conduct a hearing on-the-record.

B. If the complainant did not request a hearing and the bureau does not dismiss the complaint, the bureau shall make a final determination in accordance with the remedies provision of these administrative procedures.

C. If the complaint is made against the bureau, the office of the secretary of state shall provide a neutral hearing officer who has no working or personal relationship with the office of the secretary of state.

D. For all other complaints, the office of the secretary of state shall provide a hearing officer. It may be; but is not limited to, an employee of the office of the secretary of state.

E. The bureau shall provide a time, date and location for the hearing and shall send written notice to complainant and alleged violator at least fifteen (15) days prior to the hearing. If there is an expedited hearing, the hearing officer shall provide telephonic and facsimile notice.

F. Upon written request to another party, any party may ask to obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing and inspect and copy any documents that the other party will or may introduce in evidence at the hearing. The party to whom such a request is made should comply with it within ten (10) days after the receipt of the request. The hearing officer, however, has no statutory power to force the parties to comply with these requests.

G. If there is a hearing on the record, the record will include, at a minimum: the written complaint; written responses to the complaint; documentation provided in support of or in defense of the complaint; and written or audio record or any hearing or pre-hearing proceedings conducted by the hearing officer with regard to the complaint.

H. The hearing officer has the discretion to grant continuances, to take testimony or to examine witnesses. The hearing officer may also hold conferences before or during the hearing for the settlement or simplification of the issues.

I. The hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, in his discretion, exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

J. The bureau shall provide a tape recording of any on-the-record hearing. If a party wants a court reporter, that party must pay the cost.

K. If a person who has requested a hearing does not appear, and no continuance has been granted, the hearing officer may hear the evidence of such witnesses as may have appeared, and the hearing officer may proceed to consider the matter and dispose of it on the basis of the evidence before it. Where, because of accident, sickness or other cause, a person fails to appear for a hearing that he has requested, the person may, within ten (10) days, apply in writing to the hearing officer to reopen the proceeding, and the hearing officer upon finding sufficient cause shall immediately fix a time and place for a hearing and give the person notice as required above.

[1.10.18.10 NMAC - N, 03-15-2004]

1.10.18.11 REMEDIES:

A. The hearing officer shall make a final determination regarding the complaint within ninety (90) days after the complaint has been filed with the bureau unless the complainant agrees in writing to extend the deadline.

B. If a party, agency or hearing officer would like to extend the deadline, it must receive written approval from the complainant. If the complainant does not give approval, the complainant will automatically proceed to alternative dispute resolution as found in the New Mexico Governmental Dispute Act, NMSA 1978, Sections 12-8A-1 through 12-8A-5. The office of the secretary of state, if not a party, must adopt the agreement reached by the parties to the alternative dispute resolution procedure within sixty (60) days after the complaint is referred to resolution.

C. The final determination shall be in writing and shall be sent by return receipt requested mail to the complainant and alleged violator.

D. The final determination may dismiss the case or provide a remedy appropriate to the violation. In no event shall the remedy involve either the payment of money to the complainant or a finding that an election official is subject to civil penalties. An appropriate remedy may include, but is not limited to any or all of the following: written finding that Title III has been violated; a plan for rectifying the particular violation, an assurance that additional training will be provided to election officials so as to ensure compliance with HAVA Title III and the New Mexico Election Code; and a commitment to better inform voters of their rights.

E. By posting a notice on its website and by distributing news releases as it deems appropriate, the office of the secretary of state shall publicize the results of its assessment and investigation of the complaint that results in a finding that a Title III violation has or has not occurred.

[1.10.18.11 NMAC - N, 03-15-2004]

1.10.18.12 RIGHT OF APPEAL: These procedures do not grant a statutory right of review.

[1.10.18.12 NMAC - N, 03-15-2004]

HISTORY of 1.10.18 NMAC: [Reserved]

ADMINISTRATIVE COMPLAINT FORM
(For Alleged Title III Violations of the Help America Vote Act)

Name of Complainant/Complaining Party

_____
Name

_____
Address

_____
City/Zip Code

_____
Contact Number

Description of Alleged Title III Violation (Including Alleged Violator/Witness)

_____

_____

_____

_____

_____

_____

(Attach Additional Information or Documentation if necessary)

If needed, I would like to request:

☐ an on the record hearing.

☐ no hearing.

_____
Complainant/Complaining Party

State of _____
County of _____

(Seal)

Subscribed and sworn or affirmed to me this _____ day of _____, 20__.

_____
Notary Public

My Commission Expires: _____

For additional information of the Administrative Complaint Procedure, please carefully review 1.10.18 NMAC available at www.sos.state.nm.us or in the office of the county clerk.

LAWS OF NEW YORK, 2005

CHAPTER 23

AN ACT to amend the election law, in relation to providing for an administrative complaint procedure pursuant to the Help America Vote Act of 2002

Became a law May 3, 2005, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 16 of section 3-102 of the election law, as renumbered by chapter 659 of the laws of 1994, is renumbered subdivision 17 and a new subdivision 16 is added to read as follows:

16. administer the administrative complaint procedure as provided for in section 3-105 of this article.

§ 2. The election law is amended by adding a new section 3-105 to read as follows:

§ 3-105. Administrative complaint procedure. 1. The state board of elections shall establish and maintain a uniform, nondiscriminatory administrative complaint procedure pursuant to which any person who believes that there is a violation (including a violation which has occurred or is occurring or is about to occur) of any provision of title three of the federal Help America Vote Act of 2002 (HAVA), may file a complaint.

2. Initially, any such complaint may be made orally, in person or by telephone, or in writing. Such complaints may be made to the state board of elections or with any local board of elections. A toll-free number shall be made available therefor for telephone calls to the state board of elections. Complaints shall be addressed by election officials expediently and informally whenever possible.

3. All formal complaints shall be filed with the state board of elections. All formal complaints shall be written, signed and sworn by the complainant. The complainant shall use a complaint form promulgated by the state board of elections. The state board of elections or a local board of elections shall assist any person with a disability who requests assistance to file a complaint. Complaints raising similar questions of law and/or fact may be consolidated by the state board of elections.

4. Upon the written request of the complainant, there shall be a hearing on the record, unless prior to the hearing, the state board of elections, in accordance with subdivision four of section 3-100 of this article, sustains the formal complaint as being uncontested. Any party to the hearing may purchase a transcript of such hearing.

5. The evidentiary standard applied to all formal complaints shall be a preponderance of the evidence.

6. Hearings shall be conducted by a panel of two commissioners of the state board of elections of opposite parties or senior staff members of opposite parties as selected by the commissioners of that party. If the panel does not agree to sustain the complaint, the formal complaint

EXPLANATION--Matter in *italics* is new; matter in brackets [-] is old law to be omitted.

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shall be deemed dismissed and shall constitute the determination of the panel.

7. The determination of the hearing panel will be final unless changed by the state board of elections pursuant to subdivision four of section 3-100 of this article, within ninety days of the filing of the formal complaint. A final determination shall be filed and published by the state board of elections within ninety days after the filing of the formal complaint, unless the complainant agrees to a longer period of time. When a violation has been found, the final determination shall include an appropriate remedy for any violation of Title III of the Help America Vote Act of 2002 (HAVA) found by the state board of elections. A final determination dismissing a formal complaint may be filed by any one member of the hearing panel.

8. Whenever a final determination of a formal complaint is not made within ninety days, or any other longer agreed upon time period, the state board of elections shall refer the formal complaint to an independent, alternative dispute resolution agency. Such hearings and determinations shall be conducted by the alternative dispute resolution agency pursuant to regulations promulgated by the state board of elections pursuant to subdivision four of section 3-100 of this article. Such agency shall have sixty days, from the expiration of the original ninety day time period, or any other longer agreed upon time period, to make a final determination. The state board of elections shall contract, pursuant to subdivision four of section 3-100 of this article with one or more such alternative dispute resolution entities for this specific purpose.

9. No provision of this section shall be construed to impair or supersede the right of an aggrieved party to seek a judicial remedy including a judicial remedy concerning any final determination made pursuant to subdivision eight of this section. The state board of elections shall provide notice to all complainants of the provisions of this subdivision.

§ 3. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

Office of the Ohio Secretary of State

Election Complaint Procedure Adopted Pursuant to Section 402 of the *Help America Vote Act of 2002*

Section 1. Authority.

These complaint procedures are established as required by the *Help America Vote Act of 2002* [hereafter referred to as HAVA], P.L. 107-252, Section 402, and in accordance with the Ohio State Plan created pursuant to HAVA.

Section 2. Purpose.

These rules are promulgated to establish State-based uniform, nondiscriminatory administrative complaint procedures under which all complaints alleging violations of Title III of HAVA, sections 301 through 312, may be promptly and efficiently resolved and all complaints of merit will be appropriately remedied by the State of Ohio.

Section 3. Definitions.

As used in this complaint procedure, the following terms shall have the following meanings:

(A) "Complainant" means the person who files a complaint under this chapter.

(B) "Federal election" means a primary, special primary or general election at which a federal office appears on the ballot.

(C) "Respondent" means any state or local election official whose actions are asserted, in a complaint under this chapter, to be in violation of Title III.

(D) "State or local election official" means the Secretary of State, any member of a county board of elections, or any person employed by either the secretary or a county board of elections whose responsibilities include or directly relate to the administration of any federal election.

(E) "Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code §§15481-15485.

Section 4. Applicability.

(A) Any person who believes there is a violation of any provision of Title III of HAVA (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.

(B) These procedures shall apply only to complaints raised under Title III of HAVA.

(C) Other complaints related to the conduct of elections shall be raised with the responsible public official(s), United States or Ohio prosecutors, or the Ohio Secretary of State as appropriate under 42 U.S.C. § 1973 et seq.; 42 U.S.C. § 12101 et seq.; 42 U.S.C. § 701; and other applicable laws.

Section 5. Form of Complaint.

(A) The complaint must be in writing and notarized, and signed and sworn to by the person filing the complaint. The complaint must set forth the complainant's name, mailing address and telephone

number, and each alleged violation of Title III of HAVA, and must include a clear and concise description of each alleged violation that is sufficiently detailed to apprise both the respondent and the decision maker of the nature of each alleged violation.

(B) The complaint may name witnesses to the alleged violation and include their written statements; may include documentary evidence supporting the allegations; and may also identify the sections, subsections, and paragraphs of HAVA alleged to have been violated.

(C) The Secretary of State shall establish a complaint form to be used, although complaints received in substantially the same form and meeting all the legal requirements of subsection (A), above, shall be accepted.

Section 6. Place and Method of Filing Complaints.

The complaint shall be filed, along with adequate proof of mailing or delivery of a copy of the complaint to each Respondent, with the Office of the Ohio Secretary of State, Elections Division, 180 E. Broad Street, 15th Floor, Columbus, Ohio 43215. Telephonic, electronic, and facsimile complaints will not be accepted. There is no fee for filing a complaint.

Section 7. Service of Papers on all Parties.

(A) When a complaint alleges violations by a county board of elections, the Secretary of State or the Secretary's designee shall promptly transmit a copy of the complaint to the county board of elections and permit the board to respond on its own behalf.

(B) A copy of each piece of correspondence between the complainant or the county board of elections and the Secretary of State, the Secretary's designee, or the hearing officer, shall be filed with the Office of the Secretary of State. Copies of the correspondence and filings shall simultaneously be mailed to the hearing officer, if his or her identity and address are known, and to the opposing party, if any.

Section 8. Maintenance and Confidentiality of Official Agency Record.

(A) The Secretary of State shall be the official custodian of the record of each complaint.

(B) The record shall contain:
(1) A copy of the complaint, including any amendments made with the permission of the Secretary of State or the Secretary's designee;
(2) A copy of any written submissions by the complainant, respondents, or other interested persons, including any responses or replies thereto permitted under the schedule or by the Secretary of State or the Secretary's designee;
(3) Copies of all notices and correspondence with regard to the complaint;
(4) Originals or copies of any tangible evidence produced;
(5) The results of any investigation conducted;
(6) Other documents received or generated by the Secretary of State, his or her designee, or the hearing officer, concerning the substance and/or procedure applied to resolution of the complaint; and
(7) A copy of any final determination made regarding the complaint.

(C) All records are confidential until there is a final resolution of each complaint. If the complainant makes a timely request for a hearing, the record shall be confidential until the hearing is finally resolved.

Section 9. Initial Screening.

(A) The complaint shall be screened by the Secretary of State or a person designated by the Secretary to determine if it meets the criteria in HAVA and these rules.

(B) The Secretary of State or the Secretary's designee shall examine each complaint and may reject it for filing if:
(1) The complaint is not signed and notarized under oath;
(2) The complaint does not identify the complainant or include an adequate mailing address;
(3) The complaint does not allege on its face a violation of Title III with regard to a federal election; or
(4) More than 90 days have elapsed since the final certification of the federal election at issue.

(C) If the complaint does not meet the criteria in HAVA and these rules as stated herein, it shall be dismissed, although it may also be referred to other appropriate authorities.

(D) If the complaint is dismissed, a designee of the Secretary of State shall send notice of the dismissal and a copy of these rules to the complainant. The notice shall advise the complainant that he or she is not precluded from refiling a complaint which conforms to the legal requirements.

(E) The Secretary of State or the Secretary's designee shall do all the following:
(1) Take all necessary steps to prepare the complaint for determination;
(2) In coordination with the parties, shall establish a schedule under which the complainant and respondent or respondents, as well as any other interested persons, may file any written submissions concerning the complaint, and under which the complaint shall be finally determined;
(3) Provide copies of the official record to the decision maker in a timely manner.

(F) When the Secretary of State, or any employee of the Secretary, is a Respondent, the functions assigned to the Secretary under this administration procedure shall, to the greatest extent possible, be performed by individuals not directly involved in the facts giving rise to the complaint.

Section 10. Consolidation of Complaints.

The Secretary of State or the Secretary's designee may consolidate complaints and resolve them together if they relate to the same actions or events, or if they raise common questions of law or fact, or if the Secretary or the Secretary's designee otherwise deem such consolidation appropriate.

Section 11. Administrative Resolution.

(A) Complaints filed pursuant to this procedure shall be heard and determined by the Secretary of State or the Secretary's designee, and that determination shall be final.

(B) Following the initial screening, complaints shall be resolved informally if possible. Complaints shall be evaluated, and a decision rendered, based upon the written submissions, unless the complainant requests a hearing on the record. A request must be made in writing to the secretary of state no later than 10 days after the filing of the complaint, or in the original complaint itself, but not in any amendment filed more than 10 days after the original complaint.

(C) The Secretary of State or the Secretary's designee shall take all necessary steps to prepare the complaint for determination and, in coordination with the parties, shall establish a schedule under which the complainant and respondent or respondents, as well as any other interested persons, may file any written submissions concerning the complaint, and under which the complaint shall be finally determined.

(D) The Secretary of State or the Secretary's designee shall consider all information filed and shall conduct an informal investigation of the complaint as appropriate, including contacting the persons alleged to have violated HAVA or alleged to be about to violate HAVA.

(E) Based on the agency record, the Secretary of State or the Secretary's designee may enter a decision and order, which may include an appropriate remedy. When the decision is that no violation of HAVA, Title III, has or is about to occur, the complaint shall be dismissed and the results of the procedures published on the website of the Office of the Secretary of State.

(F) The Secretary of State or the Secretary's designee shall send the decision and order to the complainant by appropriate means including proof of delivery to the address provided by the complainant.

(G) The Secretary of State or the Secretary's designee simultaneously shall send a copy of the decision and order to the election official, if any, who was alleged, directly or indirectly, to have violated or be about to violate Title III of HAVA.

(H) Along with the decision and order, the Secretary of State or the Secretary's designee shall notify the complainant of his or her right to request a hearing on the record if not satisfied. The request shall be in writing and received within 10 calendar days after the complainant's receipt of the decision and order. Such requests may be submitted by facsimile or e-mail as well.

Section 12. Administrative Hearing.

(A) An informal administrative hearing shall be conducted following timely receipt of a written request for a hearing on the record in accordance with Section 11(B) of this procedure.

(B) The Secretary of State or the Secretary's designee shall promptly establish a date, time, and location for the hearing. The hearing shall occur within a reasonable period of time. The hearing shall be open to the public.

(C) The Secretary of State or the Secretary's designee shall provide not less than five days notice of the hearing to the complainant, each respondent, and any other person who has requested notice in writing. Notice shall be provided by mail and by posting on the Secretary of State's Web site, and by such other means as the Secretary deems appropriate.

(D) The Secretary of State may preside over the hearing or may designate a hearing officer to conduct the matter and to prepare a recommended decision and order.

(E) Any complainant, respondent, or other person may file a written brief or memorandum within five business days of the conclusion of the hearing, but no responsive brief or memoranda will be accepted without authorization of the Secretary of State or the hearing officer.

(F) The Ohio Administrative Procedure Act, the Ohio Rules of Civil Procedure, the Ohio Rules of Evidence, and the Ohio Rules of Appellate Procedure shall not apply to these proceedings.

Section 13. Objectives and Procedure of Administrative Hearing.

(A) The Secretary of State or the hearing officer has considerable discretion in how the hearing is conducted, although the overriding consideration is to provide a speedy, fair and efficient method by which the parties may be heard and the matter decided in order to support and effectuate the letter and spirit of HAVA.

(B) The Secretary of State or the hearing officer shall have a copy of the record of the complaint(s) to be heard.

(C) The Secretary of State or the hearing officer shall introduce the matter on the record and explain the procedures to be followed.

(D) The complainant, any respondent, or any other interested member of the public may appear at the hearing and testify or present tangible evidence in connection with the complaint. Each witness shall be sworn. A complainant, respondent, or other person may, but need not, be represented by an attorney.

(E) The hearing officer may limit the testimony, if necessary, to ensure that all interested participants are able to present their views or to assure completion of the hearing within a reasonable time.

(F) The hearing officer may recess the hearing and reconvene at a later date, time, and place announced publicly at the hearing.

(G) The Secretary of State or the hearing officer may participate during the presentations of the parties at any time.

(H) At the conclusion of the hearing, the Secretary of State or the hearing officer shall take the matter under advisement and promptly prepare or recommend a decision and order for the Secretary of State.

Section 14. Recording of Administrative Hearing.

An audio recording shall be made of the proceedings. The Secretary of State is obligated to prepare a transcript of the audio recording, but such a transcript shall be prepared at the expense of the person requesting the transcript.

If any party prefers to have a court reporter record the proceedings, he or she may do so at his or her own expense.

Section 15. Special Accommodations at the Administrative Hearing.

Individuals with disabilities shall inform the Secretary of State or his or her designee at least 5 business days before the informal hearing of any special accommodations they require. They may have people assist them and speak for them as desired.

Section 16. Final Decision.

(A) The Secretary of State retains authority on behalf of the State of Ohio to make the final decision in each instance from the initial screening through a hearing on the record. The Secretary of State's determination shall be final and shall not be subject to judicial review.

(B) The Secretary of State shall determine whether, under a preponderance of the evidence, a violation of Title III has been established. If the Secretary determines that a violation has occurred, then a written determination shall be issued specifying the appropriate remedy. If the Secretary determines that no violation has been established, the complaint shall be dismissed.

(C) Upon deciding a meritorious complaint, the Secretary of State shall order an appropriate remedy.

(D) Upon the Secretary of State's entry of the final decision and order into the record, the Secretary shall also deliver the decision and order to the complainant by appropriate means, including proof of delivery, to the address provided by the complainant and to the other parties, if any.

(E) If the final decision and order result in the dismissal of the complaint, the result of the procedures shall be published on the website of the Secretary of State.

Section 17. Appropriate Remedies.

(A) The Secretary of State has discretion to determine the nature of an appropriate remedy when a complaint has led to the establishment of a violation of Title III of HAVA.

(B) An appropriate remedy may detail actions to be taken or procedures to be followed by election officials, and it may include a corrective action plan.

(C) The officials required to take the corrective action shall report to the Secretary of State or his designee the steps taken in accordance with the requirements and schedule provided in the decision and order.

(D) Appropriate remedies are limited to those which are designed to assure compliance with Title III of HAVA. The remedy may not include any award of monetary damages, costs, or attorney fees, and may not include the invalidation of any primary or election or a determination of the validity of any ballot or vote. Remedies addressing the validity of any primary or election or of any ballot or vote may be obtained only as otherwise provided by law.

(E) A complaint filed pursuant to this chapter does not constitute an election contest pursuant to sections 3515.08 through 3515.16, inclusive, of the Revised Code of Ohio.

Section 18. Time Allowed for Entire Process.

(A) The State has 90 days within which to make a final determination with respect to a complaint. The period begins with the date of the filing of the complaint.

(B) The time limit may be extended only with consent of the complainant and all opposing parties, if there are any.

(C) When multiple complaints that have been consolidated, all deadlines in these rules shall be determined by the date the last complaint was filed.

(D) When multiple complaints have been consolidated, an extension of time shall apply only to those complainants who have consented to the extension of time.

(E) Consent for an extension of time shall be in writing and filed with the Secretary of State before the 90-day period expires.

(F) The Secretary of State or the hearing officer is authorized to grant reasonable extensions of time at the request of the parties as qualified above.

Section 19. Results of Failure to Conclude the Hearing Process within the Time Allowed.

(A) When a complaint has not been finally resolved within the 90-day period, the Secretary of State must refer the complaint to the local bar association, state bar association, or a third party certified Alternative Dispute Resolution (ADR) professional to be resolved within 60 days under alternative dispute resolution procedures. The decision as to which of these to employ will be decided on a case-by-case basis which will take into account the convenience of all interested parties as well as the efficiency of the process.

(B) When complaints have been consolidated and some complainants have not consented to an extension of the 90-day deadline, their complaints shall be subject to separation from the others and treatment under this section.

(C) The person designated to provide the ADR, hereafter referred to as the ADR hearing officer, shall have a copy of the agency record of the proceedings.

(D) With one exception, the ADR hearing officer shall adhere to this Election Complaint Procedure in resolving the complaint. The exception is that the ADR hearing officer may conduct an administrative hearing in accordance with the hearing procedures set forth in sections 119.07 through 119.13 of the Revised Code of Ohio, with time lines adjusted to fit the time allowed. Conduct of the hearing in accordance with these procedures does not alter the authority of the Secretary of State as the final decision maker.

(E) The ADR hearing officer shall conclude the matter as expeditiously as possible and shall forward his or her recommended decision and order to the Secretary of State within the time allowed by the Secretary of State.

(F) The Secretary of State shall enter the final decision and order no later than 60 calendar days after the expiration of the 90-day period.

###

SoS Form No. ___ (2004-05)

ADMINISTRATIVE COMPLAINT FORM

This form may be used by any person alleging a violation of Title III of the *Help America Vote Act of 2002* (42 U.S.C. §15481-15485)

Mail or hand-deliver the signed and notarized complaint to:

Office of the Ohio Secretary of State
Election Reform Division
180 E. Broad Street, 15th Floor
Columbus, OH 43215

Complaint cannot be filed by fax or e-mail.

Please type or print all information.

For Ohio Secretary of State Use Only

PERSON BRINGING COMPLAINT

Name _____

Street Address _____

City _____ County _____ State ___ Zip Code _____

Daytime Tel. _____ E-mail address: _____

PERSON OR ENTITY AGAINST WHOM COMPLAINT IS BROUGHT (One person/entity per form)

Name _____

Street Address _____

City _____ County _____ State ___ Zip Code _____

Daytime Tel. _____ E-mail address: _____

VIOLATION ALLEGED

Section of Title III of the *Help America Vote Act of 2002* allegedly violated: _____

Date alleged violation occurred: _____

Please explain in detail the facts on which the complaint is based. If necessary, attach additional sheets, properly notarized.

_____

_____

_____

_____

_____

_____

Would you like the Secretary of State to conduct a hearing on the record? □ Yes □ No

IMPORTANT: TO BE CONSIDERED, THIS COMPLAINT MUST BE PROPERLY SWORN, SIGNED AND NOTARIZED.

State of Ohio, County of _____ ss:

_____
Signature of Complainant

Sworn to and subscribed in my presence by _____, this _____ day of _____, 20___, in the City of _____, County of _____, State of Ohio.

_____
Signature of Notary Public of the State of Ohio
My Commission expires _____

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

OREGON

HAVA Complaint Procedures
OAR 165-001-0090

(1) The purpose of this rule is to adopt procedures for the receipt and disposition of complaints filed with the Secretary of State, Elections Division alleging violations of Title III of the Help America Vote Act of 2002 (HAVA). The rule is intended to fully comply with all federal requirements for the complaint procedure, as described in Section 402 of HAVA (P.L. 107-252).

(2) The procedures described in this rule are to be used solely for complaints filed alleging a violation of Title III of HAVA. Title III includes voting system standards, accessibility of voting systems to persons with disabilities, instructions on correcting voting errors, identification requirements for voting in federal elections if registration was by mail, computerized voter registration, contents of registration forms and provisional voting.

(3) State and county elections officials are encouraged to resolve HAVA complaints informally if possible. If informal resolution is not possible, and a person wishes to file a formal HAVA complaint under this procedure, the person shall use the HAVA complaint form (SEL 820). The complaint will be accepted and processed only if made in writing, signed under oath by the person filing the complaint, and notarized. The complaint form must be filed directly with the Secretary of State, Elections Division. If the complaint is submitted to a county elections office, the county elections official shall promptly forward the original complaint to the Elections Division. The complaint shall be considered filed on the day it is received at the office of the Elections Division.

(4) Upon receipt of a complaint, the Elections Division staff will review the complaint to determine if it alleges a violation of Title III of HAVA. If the complaint does not allege a violation of Title III, the complaint will be dismissed, with a letter provided to the complainant explaining the reason for the dismissal. If the complaint alleges a violation of Title III, the complaint will be acknowledged in writing, and the complainant will be offered the opportunity to request a hearing on the record. A hearing on the record may be provided by telephone or in person. The Elections Division staff will then request information from other persons who may have information related to the substance of the complaint. When the responses are received, copies will be sent to the complainant to provide an opportunity for the complainant to respond or rebut the information provided. Unless the complainant requested a hearing on the record, or the Elections Division chooses to provide such a hearing because of the nature of the allegations and responses, the Division will prepare a determination letter based on the information provided. The determination letter will address whether any violation of Title III has occurred and address how to resolve the problem to avoid its occurrence in the future.

(5) If a hearing on the record is scheduled, the Division will decide whether the hearing is to be conducted by telephone or in-person. The complainant and other persons who have relevant information to provide will be invited to participate. The hearing will be conducted before an Elections Division employee. The purpose of the hearing is to determine whether any procedure required by Title III was not correctly followed, and to develop a plan to make sure the violation, if any, does not happen again. The hearing is to be conducted as a fact-finding, problem solving forum. A record must be kept, including copies of any documents submitted and minutes, a tape or other record of the hearing.

(6) Whether the complaint is resolved through the procedures of subsections (4) or (5) of this rule, the final determination will be prepared by the Elections Division. If the outcome of the proceeding requires the provision of a remedy, the remedy must conform to state elections law and will not include financial payments to complainants or civil penalties against other involved individuals. Remedies may include written findings that a violation of Title III has occurred, strategies for insuring that that violation does not occur again, and, if it appears that the complaint involves a systemic problem, possible actions by the Elections Division to provide better instructions, training or procedures to all election officials to avoid future violations.

(7) Final determination letters will be signed by the Secretary of State or Deputy Secretary of State. All determination letters will be posted on the Division's website. A copy of the final determination will be

provided to the complainant and to any other persons who provided information or participated in a hearing.

(8) The Division will handle all complaints filed under this rule in a way that allows a final determination to be issued within 90 days of the receipt of the complaint. If delays appear to put the 90 day deadline at risk, the Division may ask the complainant to provide an extension to complete the investigation or to conduct the hearing. If the complainant does not agree to provide an extension, the final determination must either be issued within the 90 days, or the matter must be referred to the dispute resolution process described in subsection (9).

(9) The Division will provide an alternative dispute resolution process for complaints that are not resolved within 90 days of the filing of the complaint (unless an extension is granted by the complainant) or for complaints that the Division, in its sole discretion, determine warrant this level of review. The alternative dispute resolution process is intended to be a consensus or cooperative outcome procedure, not an arbitration or mediation process model with adversaries or parties. The Division will select a person from a panel of volunteers who agree to provide their services to convene a meeting of the interested parties to resolve a particular complaint or complaints. The panel member will then recommend an outcome to the Secretary, to be adopted within 60 days of the referral. The Secretary will adopt the recommendation, or a revised version of the recommendation, as appropriate. Final determinations reached following this alternative dispute resolution process shall be publicized and distributed in the manner described in subsection (7) of this rule.

SEL 820
rev. 8/03

HELP AMERICA VOTE ACT (HAVA) COMPLAINT FORM
(For filing complaints alleging possible violations of HAVA Title III)

(Refer to information pages about HAVA Title III requirements and complaints provided by Elections Division.)

Filed by (name and address):	**Filed against:**

Cite specific HAVA Title III section and requirement you believe has been violated (see table of HAVA Title III requirements provided by Secretary of State, Elections Division):

Allegations: Include specific information as to what, where, by whom, how, why and when, as applicable. **Note:** Attach any appropriate documentation/evidence.

(For additional space, use reverse side of this form.)

Verification upon Oath or Affirmation (including information on both sides of this form and any attachments.) By signing this document, I hereby state:
That all information provided by me on this form and in the attached statement, is true to the best of my knowledge;

by _____
(Complainant's signature)

State of OREGON

County of _____

Signed and sworn to (or affirmed) before me on _____, 20____
(month and day)

_____
Notary Public – State of Oregon

NOTE: File this form with the **Oregon Secretary of State, Elections Division,** Rm. 141, State Capitol Bldg., Salem, OR 97310-0722, phone (503) 986-1518, fax no. (503) 373-7414

Office Use Only: **Date Stamp:**

Complaint # _____
Date received: _____
Ack. letter: _____

SEL 820 rev. 8/03

HELP AMERICA VOTE ACT (HAVA) COMPLAINT FORM
(For filing complaints alleging possible violations of HAVA Title III)

(Refer to information pages about HAVA Title III requirements and complaints provided by Elections Division.)

(Continued from front page)

Allegations: Include specific information as to what, where, by whom, how, why and when, as applicable. **Note:** Attach any appropriate documentation/evidence.

Note: This is the back of form SEL 820. In order for this complaint to be submitted, the front side must be completed with the complainant's signature notarized.

COMISION ESTATAL DE ELECCIONES
ESTADO LIBRE ASOCIADO DE PUERTO RICO

COMPLAINT PROCEDURE TO THE ELECTION LAW RULES AND REGULATIONS

Please note the Spanish version is the official version; the English version is provided as a courtesy. If there are any discrepancies in meaning between the two versions, the Spanish version will prevail.

Approved: October 13, 2004

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ADOPTED OCTOBER 2004

ELECTIONS COMMISSION OF PUERTO RICO (CEE)
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RULES AND REGULATIONS

TITLE I PRELIMINARY DISPOSITIONS

SECTION 1.1 AUTHORITY

This procedure is adopted and promulgated in accordance with the powers conferred upon the Commonwealth of Puerto Rico Elections Commission (Elections Commission) in articles 1005 sections (e) and (l), and 1007 of the law No.4 of December 20, 1977 as amended, also known as "Election Law of Puerto Rico"

SECTION 1.2 PURPOSES

The purpose of this procedure is to establish the administrative procedure to attend to, investigate and resolve all complaints submitted to the Elections Commission by any interested party and could constitute an infraction to the election law.

SECTION 1.3 DEFINITIONS

All definitions contained in article 1003 of the Election Law of Puerto Rico that are applicable to this procedure are incorporated here.

For the purposes of this procedure the following terms will be understood as expressed:

1.- EVALUATION COMMITTEE: Group of evaluators appointed to represent the Elections Commission and the President to examine and investigate complaints.
2.- FILE: All documents included in and related to the complaint.
3.- ELECTION LAW: Includes Law No.4 of December 20, 1977 as amended, also known as Election Law of Puerto Rico, rules and regulations, approved resolutions by the Elections Commission, supplementary approved laws by the Legislative Assembly and the applicable federal laws.
4.- COMPLAINT: Any allegation made in writing and under oath by a complainant denoting acts, conduct or omissions that could constitute an infraction of the applicable election law.
5.-COMPLAINANT: Any voter, candidate, political party, natural or legal entity who alleges that an act, conduct or omission of acts that could constitute an infraction to the applicable election law is or has been committed.
6.- ACCUSED: Any voter, candidate, political party, natural or legal entity who is denounced by means of a complaint in the commission of acts, conduct or omission of acts that could constitute an infraction of the applicable election law.

SECTION 1.4 APPLICABILTY AND REACH

All dispositions of this procedure are applicable to voters, candidates, political parties and natural and legal entities.

TITLE II EVALUATION COMMITTEE

SECTION 2.1 APPOINTMENTS

In accordance with the dispositions of article 1005 section (e) of the Election Law, an Evaluation Committee is created and composed of one evaluator representing each Elections Commissioner and one representing the President, who will serve as the head of the Evaluation Committee.

SECTION 2.2 ROLES

The Evaluation Committee will be entrusted to examine the complaints presented, formulate assessments and submit the corresponding recommendations to the Elections Commission.

SECTION 2.3 EVALUATION COMMITTEE QUORUM AND RESOLUTIONS

The participation of at least two (2) Election Commissioner representatives and the representative of the President will constitute quorum for all work.

The Evaluation Committee recommendations must be adopted by unanimous vote of all representatives of the Election Commissioners present at the time of evaluation.

In all matters considered by the Evaluation Committee if the Evaluation Committee fails to reach a unanimous vote, the representative of the President, will decide, this being the only time or circumstance in which he/she may vote. This decision will be considered as the Committee's ruling.

Any member of the Committee who opposes the ruling to be submitted in the Recommendation Report can record a separate vote, which will be included as part of the file to be presented to the Elections Commission.

SECTION 2.4 TERM TO SUBMIT THE REPORT TO THE ELECTIONS COMMISSION

The Evaluation Committee after reviewing the complaint, and no later than fifteen (15) days after the Elections Commission Secretary received the file, must submit a report with all recommendations to the Elections Commission Secretariat to be considered in the next ordinary session of the Elections Commission. As Election Day nears, the maximum time for review by the Evaluation Committee will be shortened as directed by article 1007 section (b) of the Election Law of Puerto Rico.

SECTION 2.5 REACH OF RECOMMENDATIONS

The recommendations in the report to the Elections Commission may include but are not limited to: (1) proceed to close the complaint without further need for action; (2) submit to the Puerto Rico Department of Justice or the appropriate Administrative body; (3) proceed according to the law against the accused; (4) submit a recommendation to the Elections Commission for remedy of a violation; (5) recommend to the Elections Commission that they further investigate the complaint. In the last case, the complaint will be pending resolution until the end of the evaluation recommended by the Elections Commission.

SECTION 2.6 FOUNDATIONS FOR RECOMMENDING THE ARCHIVING OF COMPLAINTS

At any stage of the procedure, the following will constitute valid reasons to recommend the closing of a complaint without further need for action:

1.- The complaint does not refer to facts that could constitute an infraction of law.
2.- Due to the nature of the alleged acts, omissions or conduct, the Elections Commission lacks jurisdiction in the matter.
3.- An anonymous complaint or a complaint filed using a pseudonym or when a complaint is filed under the name of a natural person without his/her knowledge and consent.
4.- When the written complaint includes foul language, insults, or obscenity.
5.- When the complainant refuses to appear before the Evaluation Committee or to cooperate by presenting necessary and/or required information.
6.-The complaint is considered finalized when it has been heard and resolved by the Elections Commission, or by the competent court or administrative body with legal right to resolve it.
7.- The substance of the complaint is in process before a competent court or administrative body with legal right to resolve it.

The Elections Commission's recommendations or determinations concerning complaints of alleged violations will be published.

SECTION 2.7 INTERVENTION BY THE ELECTIONS COMMISSION

The Elections Commission, after evaluating the Evaluation Committee report, may accept, modify, revoke, return for re-evaluation, propose or require a remedy, or release a lawful decision. When circumstances justify, the Elections Commission may ignore the investigation, proceedings and/or recommendation of the Evaluation Committee, when they decide a matter.

SECTION 2.8 TERM TO TAKE ACTION

Once the report is submitted to the Elections Commission, it must take action within fifteen (15) days. If the Elections Commission does not take any of the actions

mentioned in section 2.7, within the prescribed term, it will be assumed that the Elections Commission has reviewed the report and agrees with the recommended decision. In this case, the decision will be considered as the Elections Commission's decision and must be enforced within the following five (5) days. As Election Day nears, the maximum time for review for Elections Commission action will be shortened as directed by article 1007 section (b) of the Election Law of Puerto Rico.

TITLE III COMPLAINTS

SECTION 3.1 FILING OF THE COMPLAINT AND NOTIFICATION

All complaints shall be presented to the Elections Commission's Secretariat in original with five (5) additional copies. The Secretary will open a file, assign it a number and notify both parties, complainant and accused, providing them with a copy of the complaint.

The Secretary will present the file to the President of the Evaluation Committee within twenty four (24) hours after receiving it. Once the President has received it, he/she shall call on the Evaluation Committee to meet within the following seventy two (72) hours, to initiate the evaluation process.

SECTION 3.2 COMPLAINT CONTENT

All complaints must be presented in writing and must include:

1.- Accused's name and address.

2.- Complainant's name, address and signature.

3.- A concise statement of facts that supposedly could constitute a violation of election law. All supporting documents that sustain the basis of the complaint should be included.

4.- Notarized statement under oath indicating that all facts are true and of personal knowledge.

SECTION 3.3 COMPLAINTS THAT DO NOT MEET THE REQUIREMENTS

For those complaints that do not meet the previous requirements, the Secretary will assign a file number and notify the complainant giving him/her ten (10) days to comply with the requirements, advising him/her that if he/she does not comply within the period, the complaint will be rejected. The Secretary will keep the file until the requirements are met or until the complaint is discarded for non-compliance.

TITLE IV APPEARANCE BEFORE EVALUATION COMMITTEE

SECTION 4.1 SUMMONS OF APPEARANCE

In order to investigate the complaint, the Evaluation Committee, through the Elections Commission, may require the appearance before the Evaluation Committee of any person, including the complainant. The summons of appearance may include the obligation to provide reports or related documents.

SECTION 4.2 HEARING ON THE RECORD

At the request of any complainant, there shall be a hearing on the record.

TITLE V GENERAL DISPOSITIONS

SECTION 5.1 COMPLAINTS FROM THE ELECTORAL COMMISSIONERS

This procedure is not applicable to the members of the Elections Commission; any complaints they have should be discussed and resolved among the Elections Commission, as otherwise according to the law.

SECTION 5.2 CONFIDENTIALITY

Complaint files will be considered private documents from the time they are filed until a decision by the Elections Commission.

SECTION 5.3 PENALTIES

Any person that is found to have knowingly and fraudulently acted in violation of this procedure will be sanctioned according article 8005 of the Election Law of Puerto Rico, which establishes a maximum of three (3) months in jail or a maximum fine of three hundred US dollars (US$300.00), or both at the Tribunal's discretion.

SECTION 5.4 TERM VARIATIONS

The terms established in this procedure not prescribed in the Election Law of Puerto Rico, could be modified by the Elections Commission in special cases and with justified reason.

SECTION 5.5 AMENDMENTS OF THE PROCEDURE

This procedure may be amended by the Elections Commission at any convenient time deemed beneficial for a better enforcement of the Election Law of Puerto Rico.

SECTION 5.6 INDEPENDENCE

If any title, article, section, part, paragraph or clause of this procedure were to be declared unconstitutional by a competent court, the judgment in that effect will not affect or invalidate the rest of its content.

COMPLAINT PROCEDURES
ADOPTED OCTOBER 2004

SECTION 5.7 VALIDITY

This procedure will be in effect once the requisites stated in Article 1005 section (l) are met that require prior notification of the Governor of Puerto Rico and the Legislative Assembly through publication to that effect for two (2) times in a period of two (2) weeks in two (2) newspapers of general circulation.

Signed in San Juan, Puerto Rico on October 13, 2004.

AURELIO GRACIA MORALES
President

GERARDO A. CRUZ MALDONADO
Electoral Commissioner PPD

THOMAS RIVERA SCHATZ
Electoral Commissioner PNP

JUAN DALMAU RAMIREZ
Alternate Electoral Commissioner PIP

CERTIFICATE:
This procedure was approved by the Commonwealth Elections Commission in ordinary session held on the 13 of October, 2004. I herby certify in San Juan, Puerto Rico on October 20, 2004.

RAMON M. JIMENEZ FUENTES
Secretary

TITULO I

DISPOSICIONES PRELIMINARES

Sección 1.1- AUTORIDAD

Este Reglamento se adopta y promulga de acuerdo con los poderes conferidos a la Comisión Estatal de Elecciones de Puerto Rico por los Artículos 1.005 Incisos (e) y (l) y 1.007 de la Ley Núm. 4 del 20 de diciembre de 1977, según enmendada, conocida como la "Ley Electoral de Puerto Rico".

Sección 1.2- DECLARACION DE PROPÓSITOS

Este Reglamento tiene como propósito el establecer un procedimiento administrativo para atender, investigar y resolver las querellas que se sometan a la consideración de la Comisión Estatal de Elecciones por cualquier parte interesada y que puedan constituir infracciones al ordenamiento electoral.

Sección 1.3- DEFINICIONES

Se incorporan a este Reglamento las definiciones que resulten aplicables de las contenidas en el Artículo 1.003 de la Ley Electoral de Puerto Rico.

A estos efectos de este Reglamento los siguientes términos tendrán los significados que a continuación se expresan:

1. **Comité Evaluador** - Un grupo de examinadores designados en representación de los Comisionados Electorales y del Presidente para entender en el examen e investigación de querellas.
2. **Expediente** - Los documentos radicados y relacionados con la querella presentada.
3. **Ordenamiento Electoral** - Comprende la Ley Núm. 4 del 20 de diciembre de 1977, según enmendada, conocida como Ley Electoral de Puerto Rico, los reglamentos y resoluciones aprobados por la Comisión

Estatal de Elecciones, leyes especiales aprobadas por la Asamblea Legislativa y aquellas leyes federales aplicables.

4. **Querella** - Cualquier alegación formulada mediante escrito y bajo juramento por un querellante señalando la comisión de actos, el empleo de conducta o la omisión de realizar diligencias que pudieren constituir una infracción al ordenamiento electoral aplicable.

5. **Querellante** - Cualquier elector, candidato, partido, persona natural o jurídica que alegue que se está o se ha estado incurriendo en actos, el empleo de conducta o la omisión de realizar diligencias que pudieren constituir infracciones al ordenamiento electoral aplicable.

6. **Querellado** - Cualquier elector, candidato, partido, persona natural o jurídica a quien se le impute mediante querella la comisión de actos, el empleo de conducta o la omisión de realizar diligencias que pudieran constituir infracción al ordenamiento electoral aplicable.

Sección 1.4 - APLICACIÓN Y ALCANCE

Las disposiciones de este Reglamento serán de aplicación a los electores, candidatos, partidos, y personas naturales o jurídicas.

TITULO II

COMITÉ EVALUADOR

Sección 2.1 - DESIGNACIÓN

En armonía con las disposiciones del Incido (e) del Artículo 1.005 de la Ley Electoral, se crea un Comité Evaluador compuesto por un examinador en representación de cada Comisionado Electoral y un representante del Presidente, quien presidirá el Comité.

Sección 2.2 - FUNCIONES

El Comité Evaluador tendrá la encomienda de examinar las querellas radicadas, formular determinaciones y someter las recomendaciones correspondientes a la Comisión.

Sección 2.3 - QUÓRUM Y ACUERDOS DEL COMITÉ EVALUADOR

La presencia de dos (2) Examinadores y la del representante del Presidente constituirán quórum para todos los trabajos.

Las recomendaciones del Comité Evaluador deberán ser suscritas con el voto unánime de los componentes que estuvieren presentes al momento de someterse a votación cualquier acuerdo.

Cualquier asunto sometido a la consideración del Comité Evaluador que no recibiere la unanimidad de los votos, será decidido en pro o en contra por el representante del Presidente, siendo ésta la única ocasión o circunstancia en la que podrá votar. Esta decisión se considerará como la decisión del Comité Evaluador.

Cualquier miembro del Comité que no esté conforme con el acuerdo a ser sometido en el Informe de Recomendaciones podrá someter un voto por separado, el cual será incluido como parte del expediente a elevarse a la Comisión.

Sección 2.4 - TERMINO PARA SOMETER EL INFORME A LA COMISION

El Comité Evaluador, luego del examen de la querella, y no más tardar de los quince (15) días desde el momento en que es recibido el expediente de parte el Secretario, deberá presentar en la Secretaría de la Comisión, para ser considerado en la próxima reunión ordinaria de la Comisión, el informe con las recomendaciones. Ante la proximidad de une evento electoral el término para actuar será el provisto en el Inciso (b) del Artículo 1.007 de la Ley Electoral.

Sección 2.5 - ALCANCE DE LAS RECOMENDACIONES

Las recomendaciones contenidas en el informe a la Comisión podrán ser, entre otras, al efecto de que: (1) se proceda al archivo de la querella; (2) se someta la misma a la jurisdicción del Departamento de Justicia Estatal, o al organismo administrativo correspondiente; (3) se lleve a cabo la gestión autorizada por ley en contra del querellado; (4) se someta recomendación a la Comisión para remediar el asunto en caso de alguna violación; (5) la Comisión lleve a cabo una investigación del asunto sometido en la querella. En tal caso, ésta quedará en suspenso hasta que culmine la investigación que se recomienda realizar por parte de la Comisión.

Sección 2.6 - FUNDAMENTOS PARA RECOMENDAR EL ARCHIVO DE UNA QUERELLA

En cualquier etapa de los procedimientos, las siguientes razones constituirán, entre otras, fundamentos válidos para recomendar el archivo de una querella sin necesidad de trámite ulterior:

1. La querella no aduce hechos que puedan constituir una infracción al ordenamiento electoral.
2. Por la naturaleza de los actos, omisión o conducta alegada, la Comisión no tiene jurisdicción sobre el asunto o materia.
3. Cuando se trata de anónimos, seudónimos o cuando se consigna el nombre de una persona natural sin su conocimiento y consentimiento.
4. Cuando se trate de escritos conteniendo lenguaje insultante, injurioso, soéz o de mal gusto.
5. El querellante se ha negado a comparecer ante el Comité Evaluador o a cooperar en la presentación de información que le haya sido requerida.

6. El asunto constituye cosa juzgada por haberse considerado y resuelto por la Comisión, por un tribunal competente u organismo administrativo con facultad legal para resolverlo.
7. El asunto objeto de la querella se encuentra ante un tribunal competente u organismo administrativo con facultad legal para resolverlo.

Las recomendaciones o determinaciones de la Comisión en relación con querellas relacionadas con alegadas violaciones serán publicadas.

Sección 2.7 - INTERVENCIÓN DE LA COMISION

La Comisión, luego de evaluar el informe del Comité Evaluador, podrá adoptarlo, modificarlo, revocarlo, devolverlo para nuevo examen o emitir la decisión que a su juicio estime procedente. De igual forma la Comisión cuando las circunstancias lo justifiquen podrá prescindir de la intervención del Comité Evaluador y pasar juicio sobre cualquier querella.

Sección 2.8 - TERMINO PARA ACTUAR – ALCANCE

Una vez sometido el informe a la Comisión, ésta deberá actuar sobre el mismo dentro de un plazo no mayor de quince (15) días a partir del recibo del informe. Si la Comisión no lleva a cabo ninguna de las gestiones mencionadas en la Sección 2.7, dentro del plazo establecido, una vez expirado éste se entenderá que ha revisado dicho informe y que está conforme con la decisión recomendada en el mismo. En este caso, la decisión contenida en el informe se considerará para todos los efectos legales como la decisión de la Comisión y como tal deberá actuarse no más tardar de los cinco (5) días siguientes, luego de expirado el plazo antes establecido. Ante la proximidad de un evento electoral el término para actuar será el provisto en el Inciso (b) del Artículo 1.007 de la Ley Electoral de Puerto Rico.

TITULO III

QUERELLAS

Sección 3.1 - RADICACIÓN – NOTIFICACIÓN

Toda querella deberá ser radicada en la Secretaría de la Comisión en original y cinco (5) copias. El Secretario procederá a abrir un expediente y le será asignado, al mismo, un número de radicación, el cual le será notificado al querellante al acusarle recibo de la querella y al querellado conjuntamente con copia de la querella.

El Secretario remitirá el expediente al Presidente del Comité Evaluador, dentro de las veinticuatro (24) horas de ser radicado y una vez recibido por éste, deberá convocar al Comité Evaluador en un plazo no mayor de las setenta y dos (72) horas, a los fines de pasar juicio sobre el mismo.

Sección 3.2 - CONTENIDO DE LA QUERELLA

Toda querella deberá someterse por escrito y contener:

1. El nombre del querellado y su dirección.
2. El nombre, la dirección y la firma del querellante.
3. Una relación concisa de los hechos que, supuestamente, puedan constituir una infracción al ordenamiento electoral. Esta deberá venir acompañada de cualesquiera documentos que contribuyan a sostener los fundamentos de dicha querella.
4. Juramento en donde se haga constar que los hechos le constan de su propio y personal conocimiento.

Sección 3.3 - QUERELLAS QUE NO CUMPLEN REQUISITOS

En los casos de querellas que no cumplan con los anteriores requisitos, el Secretario las radicará y le notificará al querellante que deberá cumplir con los mismos dentro del plazo de diez (10) días, advirtiéndole que si expirare dicho término sin

cumplimentarlas debidamente, la misma podrá ser desestimada. El Secretario retendrá el expediente hasta que se cumpla con los requisitos o se desestime por el incumplimiento de los mismos.

TITULO IV

COMPARECENCIA ANTE EL COMITÉ EVALUADOR

Sección 4.1 - REQUERIMIENTO DE COMPARECENCIA

El Comité Evaluador, a través de la Comisión, podrá requerir a los fines de investigar cualquier querella, la comparecencia ante sí de cualquier persona incluyendo al querellado. Podrá incluirse en el requerimiento que la persona citada suministre o traiga consigo cualesquiera informes o documentos que se estimen necesarios.

Sección 4.2 - SOLICITUD DE AUDIENCIA

Si el querellante lo solicitaré, se le brindará una audiencia como parte de los procedimientos de la evaluación de la querella.

TITULO V

DISPOSICIONES GENERALES

Sección 5.1 - QUERELLAS DE LOS COMISIONADOS ELECTORALES

Las disposiciones de este Reglamento no serán de aplicación a los miembros de la Comisión, quienes podrán someter sus querellas a la Comisión donde se procederá a discutir y resolver las mismas, de acuerdo con la ley.

Sección 5.2 - CONFIDENCIALIDAD

Se dispone que el expediente de querella se considerará documento privado desde su radicación y hasta que la Comisión tome la acción definitiva en torno del Informe de Recomendaciones.

Sección 5.3 - PENALIDADES

Toda persona que a sabiendas y fraudulentamente obrare en contravención con este Reglamento y resultare convicta del delito imputado, será sancionada, según lo dispone la Ley Electoral de Puerto Rico en el Artículo 8.005, el cual establece una pena de reclusión que no excederá de tres (3) meses o multa que no excederá de trescientos dólares ($300.00), o ambas penas a discreción del Tribunal.

Sección 5.4 - VARIACIÓN DE TERMINOS

Los términos establecidos en este Reglamento no prescritos por la Ley Electoral de Puerto Rico, podrán ser variados por unanimidad de la Comisión en casos meritorios y por causa justificada.

Sección 5.5 - ENMIENDAS AL REGLAMENTO

Este Reglamento podrá enmendarse por la Comisión, en cualquier momento en que así se estime conveniente, en beneficio de una mayor efectividad en la implantación de la Ley Electoral de Puerto Rico.

Sección 5.6 - SEPARABILIDAD

Si cualquier título, artículo, inciso, parte, párrafo o cláusula de este reglamento fuere declarado inconstitucional por un tribunal de jurisdicción competente, la sentencia a tal efecto dictada no afectará ni invalidará el resto de este Reglamento.

Sección 5.7 - VIGENCIA

Este Reglamento cobrará vigencia una vez se haya cumplido con los requisitos enunciados en el Inciso (I) del Artículo 1.005, que requiere la notificación previa al Gobernador de Puerto Rico y a la Asamblea Legislativa de Puerto Rico, mediante publicación al efecto en dos (2) periódicos de circulación general, dos (2) veces en un lapso de dos (2) semanas.

En San Juan, Puerto Rico, a de octubre de 2004.

AURELIO GRACIA MORALES
Presidente

GERARDO A. CRUZ MALDONADO
Comisionado Electoral PPD

THOMAS RIVERA SCHATZ
Comisionado Electoral PNP

JUAN DALMAU RAMIREZ
Comisionado Electoral PIP

CERTIFICO: Que este Reglamento fue aprobado por la Comisión en reunión ordinaria celebrada el ___ de octubre de 2004 y para que así conste firmo y sello esta Certificación en San Juan, Puerto Rico a de octubre de 2004.

RAMON M. JIMENEZ FUENTES
Secretario

Rhode Island

RULES & REGULATIONS ADOPTED BY THE RHODE ISLAND BOARD OF ELECTIONS ESTABLISHING AN ADMINISTRATIVE COMPLAINT PROCEDURE

The Rhode Island Board of Elections hereby adopts the within rules and regulations for the establishment of an administrative complaint procedure pursuant to and in accordance with Title IV, Section 402(a)(2) of the Help America Vote Act of 2002 ("HAVA") (P.L. 107-282) and the provisions of section 17-7-5 of the Rhode Island General Laws of 1956, as amended.

Said rules and regulations are adopted pursuant to the Administrative Procedures Act (R.I.G.L. 42-35-1, et seq.) and are available for public inspection at the offices of the Rhode Island Board of Elections, 50 Branch Avenue, Providence, Rhode Island.

Section 1. Purpose

The Rhode Island Board of Elections ("Board") hereby adopts these administrative regulations in order to carry out the adoption, maintenance, and implementation of the administrative complaint procedure required by the Help America Vote Act of 2002 ("HAVA"), in accordance with the requirements of Title IV, Section 402 (a) (2).

Section 2. Application

These administrative regulations provide for an administrative complaint procedure for persons who believe that a state or local election official in a federal election violated Title III of the Help America Vote Act of 2002 and shall be applied uniformly and in a nondiscriminatory fashion to all complaints filed hereunder.

Section 3. Definitions

For purposes of these regulations, the following terms shall have the meanings set forth herein:

Section 3 (cont.)

"Complainant" means the person who files a complaint with the Board under the terms of this chapter.

"Federal election" means an election at which a federal office appears on the ballot.

"Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress pursuant to Section 301(3) of the Federal Election Campaign Act.

"Respondent" means any state or local board or election official whose actions are alleged, in a written complaint provided for herein, to be in violation of Title III of the Help America Vote Act of 2002.

"Board" means the State Board of Elections as defined in R.I. Gen. Laws § 17-7-5.

"Local Board" means any of the Board of Canvassers for each of the cities and towns of the State of Rhode Island.

"State or local election official" means the Board, the Secretary of State, a clerk of any city or town board of canvassers, a local board, or any individual member, employee, officer, agent, or appointee thereof.

"Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat., 1666 (2002), codified at 42 United States Code §§15481-15485.

"Presiding officer" means the person appointed by the Board to conduct a hearing on a complaint.

Section 4. Filing Of Complaints

Any person who believes that there has been a violation of any provision of Title III (that either has occurred, is occurring, or is about to occur), by any state or local election official may file a complaint with the Board in which the alleged violation occurred, as provided under these regulations. All complaints must:

1) Be in writing, sworn to under oath and under penalty of perjury, signed by the complainant, and notarized on a form provided by the Board or on any other paper or form that complies with each of the requirements of these regulations. Complainants shall receive instructions as to the complaint process and their rights to a hearing.
2) Include the full name, telephone number, and mailing address of the complainant.
3) Include a description of the alleged violation of Title III sufficient to apprise the Board and respondent of the nature and specifics of the complaint.
4) If a hearing on the record is requested, the complainant must so state.

Section 4 (cont.)

5) The completed and verified complaint shall be filed with the Board and shall certify that a copy of the complaint was provided via U.S. mail to each respondent. Respondents shall be provided the same information given complainants in (1) above.

6) Each respondent shall provide a written response within seven (7) days of receipt of the complaint, unless the parties agree on a longer time. The written response of each respondent shall be filed and served as provided by herein for complaints. Each respondent shall also have the right to request in writing that a hearing be held.

7) A complaint shall be filed within 90 days after the occurrence of the actions or events that form the basis for the complaint, including the actions or events that form the basis for the complainant's belief that a violation is about to occur, or, if later, within 90 days after the complainant knew, or with the exercise of reasonable diligence, should have known of those actions or events.

8) A complaint shall be deemed to have been filed on the day that the original signed and notarized document is actually received and filed with the Board.

Section 5. Processing Of Complaints

The Board, at its sole discretion, may process a complaint in any of the following ways:

1) The executive director of the Board may dismiss the complaint, and issue a final determination, if the complaint does not comply with the requirements set forth in these regulations or, if the complaint does not, on its face, allege a violation of Title III with regard to a federal election.

2) The executive director of the Board may dismiss the complaint, and issue a final determination, if the complaint is not filed within ninety (90) days of the final certification of the federal election at which the alleged violation took place.

3) The Board may, upon agreement of all the parties, resolve the complaint informally, and issue a final determination without a formal proceeding. Any such informal resolution procedure shall be open to the public.

4) The executive director of the Board shall schedule a date, time, and place for any hearing on the record.

5) The executive director of the Board may consolidate multiple complaints into a single proceeding if the complaints relate to the same actions or events giving rise to the complaint, or if the complaints raise common questions of law or fact.

Section 6. Hearings

If requested by the complainant, respondent, or ordered by the Board, and the complaint has not been summarily dismissed under the provisions of these regulations, the Board shall schedule a hearing that shall proceed as follows:

1) The hearing shall be tape recorded and/or transcribed, and the tape and/or transcript shall constitute the official record of the hearing.

2) Written notice of the hearing shall be given to all parties setting forth the date, time, and place of the hearing, and notice shall be sent to the mailing addresses set out in the complaint. When it is deemed reasonable by the executive director of the Board, said hearing shall be conducted within five (5) days from the date of filing the complaint with the Board.

3) At the hearing, each party shall be given an opportunity to explain their positions and present evidence to support their position. At the sole discretion of the Board or presiding officer, this presentation may include documents, witnesses, oral argument, and tangible things relevant to the determination of the complaint. Any cross-examination shall be at the sole discretion of the Board or presiding officer. However, a person may testify or present evidence to contradict any other testimony or evidence. The record of the hearing shall consist of the written complaint, the written response(s), the tape and/or transcription of the hearing, and any documents/exhibits introduced at the hearing.

4) A complainant, any respondent, or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.

5) If the hearing is on consolidated complaints, then the complainants may be allowed or required to designate a single representative party to advocate for the consolidated class at the hearing.

6) If the Board or presiding officer permits witnesses to testify, then they must be sworn in prior to their testimony being given.

7) If a complainant fails to appear at the hearing, then the complaint may be dismissed with prejudice.

Section 7. Determination

A final determination on the complaint shall be made in writing within ninety (90) days of the filing of the complaint. A copy of the determination shall be mailed to the complainant(s) and the respondent(s). This time period may only be extended upon the written consent of the complainant. The final determination of the Board or presiding officer shall be final and is only subject to discretionary review by the Rhode Island Supreme Court. The determination shall include notice of the availability of judicial review and the procedure for filing an appeal. If the presiding officer determines that there was a past, present or potential violation of Title III, then the written determination shall state the facts of the violation, set forth the specific violation of

Section 7 (cont.)

Title III, and provide for a remedy. The remedy awarded shall be directed to the improvement of processes or procedures governed by Title III, and must be consistent with state law.

Section 8. Alternative Dispute Resolution

1) If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint and the complainant does not agree in writing to an extension, then the complaint shall be referred to a review panel comprised of one to three persons selected by the Board.

2) The review panel shall issue a final determination on the complaint within sixty (60) days of the referral. The review panel shall make its determination, on the record, of the hearing provided for in any proceeding that was held before the panel and shall not conduct any further proceedings, if the hearing was held and completed. If the hearing was not held or completed, then the review board shall conduct the hearing as prescribed in these regulations.

Section 9. Publication of Decisions

All final determinations shall be published and retained in the permanent archival records of the Board by attaching said determination to the meeting minutes of the Board that is next held after the final determination was issued.

These rules and regulations are adopted this _____ day of December 2003 pursuant to the Administrative Procedures Act (R.I.G.L. 42-35-1, *et seq.*).

By Order of the
Rhode Island Board of Elections

_____
Robert J. Fontaine, Executive Director

(EXCERPTS)

SOUTH DAKOTA CODIFIED LAWS

ELECTIONS

CHAPTER 12-4

REGISTRATION OF VOTERS

12-4-42. Complaints filed under the Help America Vote Act

The State Board of Elections shall resolve any complaint filed under Section 402 of the Help America Vote Act of 2002, as of January 1, 2003, in accordance with the contested case provisions of chapter 1-26. The complaint shall be signed, notarized, and filed with the secretary of state. The board shall resolve the complaint within ninety days of its filing. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, governing the procedure for the complaint process.

Source: SL 2003, ch 83, § 16.

12-4-43. Arbitration of complaints under Help America Vote Act--Appointment of arbitrator--Time for resolution

If the State Board of Elections does not resolve the complaint within ninety days of filing, the complainant may ask the circuit court for alternative dispute resolution by appointing an impartial third party to serve as an arbitrator to resolve the dispute. The arbitrator shall resolve the dispute within sixty days.

Source: SL 2003, ch 83, § 17.

12-4-44. Time and place of hearing--Notice to parties

The arbitrator shall appoint a time and place for a hearing and serve each party personally or notify each party by registered or certified mail not less than five days before the hearing.

Source: SL 2003, ch 83, § 18.

12-4-45. Subpoena issued by arbitrator--Service and enforcement

The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may administer oaths. Any subpoena shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

Source: SL 2003, ch 83, § 19.

12-4-46. Depositions permitted by arbitrators--Compelling testimony

On application of either party and for use as evidence, the arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing. Any provision of law compelling a person under subpoena to testify is applicable.

Source: SL 2003, ch 83, § 20.

12-4-47. Evidence presented by parties--Cross-examination

Unless otherwise provided by an agreement, each party is entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

Source: SL 2003, ch 83, § 21.

12-4-48. Adjournment or postponement of hearing--Failure of party to appear

Unless otherwise provided by an agreement, the arbitrator may adjourn the hearing from time to time as necessary and at the request of a party and for good cause. The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

Source: SL 2003, ch 83, § 22.

12-4-49. Issuance of resolution--Delivery to parties

The resolution pronouncement shall be in writing and signed by the arbitrator. The arbitrator shall deliver a copy to each party personally or by registered or certified mail.

Source: SL 2003, ch 83, § 23.

Texas Administrative Code

TITLE 1	ADMINISTRATION
PART 4	OFFICE OF THE SECRETARY OF STATE
CHAPTER 81	ELECTIONS
SUBCHAPTER I	IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2002
RULE §81.171	**Administrative Complaint Procedures for Violations of Title III of the Help America Vote Act of 2002**

(a) Definitions. In this section:
(1) "HAVA" means the federal Help America Vote Act.
(2) "Party or Parties" means the person making the complaint and any political subdivisions, officer-holders, or individuals against whom the complaint is being alleged.
(3) "Secretary of State" means the currently appointed Secretary of State or his or her designee.
(b) A person who believes that a violation of Title III of the Help America Vote Act of 2002 has occurred , is occurring, or is about to occur may file a complaint with the secretary of state. Violations of Title III include but are not limited to:
(1) failure to comply with federal voting system standards, as set out in Section 301(a) of HAVA, including standards for accessibility for individuals with disabilities and alternate language accessibility;
(2) failure to comply with provisional voting procedures in an election as required by Section 302(a) of HAVA;
(3) failure to create statewide voter registration system in the manner set out in HAVA; and
(4) failure to post required voter information at the polling place as required by Section 302(b).
(c) All complaints must:
(1) be in writing, signed and notarized by the complainant.
(2) include the full name, telephone number, and mailing address of the complainant.
(3) include a description of the alleged violation of Title III sufficient to apprise the Secretary of State of the nature and specifics of the complaint.
(4) include a statement requesting a hearing on the record it desired.
(d) The complaint shall be reviewed by an employee of the Secretary of State to determine if the complaint meets the requirements as to form and content and identifies a violation of Title III of HAVA. The complaint shall also be reviewed to determine whether it alleges a Title III violation that falls within the direct authority of the Secretary of State or a Title III violation that falls within the authority of another jurisdiction. If the complaint does not meet the requirements as to form and content, it shall be returned to the complainant with an explanation as to its insufficiency. If the complaint meets the requirements, it shall be assigned a unique number and receipt date. Notice that the complaint has been accepted shall be mailed to all parties.
(e) Within 60 days of the receipt of the complaint by the Secretary of State, the Secretary of State shall review the alleged violation and make an initial determination as to whether there is a violation of Title III of HAVA.
(f) If the Secretary of State determines that there is a violation of a provision of Title III of HAVA, the Secretary of State shall inform the complainant in writing and provide the appropriate remedy. The remedy may not include any award of monetary damages, costs or

attorney fees, and may not include the invalidation of any election or a determination of the validity of any ballot or vote.

(g) If the Secretary of State determines that no violation of a provision of Title III of HAVA has occurred, the Secretary of State shall inform the complainant in writing. The notice to the complainant shall inform the complainant of his or her right to a hearing.

(h) Upon the initial determination of the Secretary of State, whether or not a violation was found, the complainant may exercise his or her right to a hearing by making a written request for a hearing on the record, which shall be held at the Secretary of State's offices in Austin, unless otherwise determined by the Secretary of State. If the nature of the complaint concerns a matter over which the Secretary of State has direct authority, the hearing shall be conducted by the Secretary of State. The hearing shall proceed as follows:

(1) The hearing shall be tape recorded, and the tape shall constitute the official record of the hearing.

(2) Written notice of the hearing shall be given to all parties including the date, time, and place of the hearing, and notice shall be sent to the mailing addresses set out in the complaint. Notice must be sent at least seven (7) days prior to the date of the hearing.

(3) If, in the discretion of the Secretary of State, the hearing is held via conference telephone call or video teleconferencing, the notice shall so state and further provide for the mechanics of the teleconference.

(4) The hearing may only be continued to a new date upon a determination of the Secretary of State that finds good cause, and in no event may it be continued more than once, or in no event may it be continued so as to make it difficult to issue a final determination within ninety (90) days of the filing of the complaint.

(5) At the hearing, each party shall be given an opportunity to explain their positions, and present evidence to support their position. At the sole discretion of the Secretary of State, this presentation may include documents, witnesses, oral argument, and tangible items relevant to the determination of the complaint. The record of the hearing shall consist of the written complaint, the written response(s), the tape of the hearing, and any documents/exhibits introduced at the hearing.

(6) If the Secretary of State permits witnesses to testify, they must be sworn in prior to their testimony being given.

(7) If a complainant fails to appear at the hearing, the complaint shall be dismissed with prejudice.

(i) If the Secretary of State fails to make a final determination within 90 days, which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such determination, the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

(j) The Secretary of State may consolidate complaints filed under this rule if the Secretary of State determines that the complaints concern the same violation.

(k) Complaints, information filed with the Secretary of State in connection with complaints, and the Secretary of State's response to the complaint are public records.

Source Note: The provisions of this §81.171 adopted to be effective November 13, 2003, 28 TexReg 9801; amended to be effective July 1, 2004, 29 TexReg 6085

The State of Texas

Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
Dial 7-1-1 For Relay Services
(800) 252-VOTE (8683)

Roger Williams
Secretary of State

ADMINISTRATIVE COMPLAINT
For Alleged Violation of Title III of the
Help America Vote Act of 2002
(42 U.S.C. § 155.12)

For Office Use Only

Complaint #

_____ - _____ - _____

Date of Filing

Pursuant to Section 31.010(b) of the Texas Election Code, the Secretary of State has sole jurisdiction to adjudicate alleged violations of Title III of the Help America Vote Act of 2002 (HAVA). Any person who believes that a violation of Title III of HAVA has occurred, is occurring, or is about to occur, may file a complaint. In order to initiate the complaint process, a sworn, written, signed and notarized complaint must be filed with the Secretary of State. The complaint must allege the violation with particularity, contain a reference to the section of HAVA alleged to have been violated, and identify the person or entity responsible for the alleged violation.

Administrative Complaint Procedure

Once a complaint is received, an employee of the Secretary of State will review it to determine if it (1) meets the requirements as to form and content and (2) identifies a violation of Title III of HAVA. We will also review the complaint to determine whether it alleges a Title III violation that falls within the direct authority of this office or within the authority of another jurisdiction, such as a county. If the complaint does not meet the requirements as to form and content, we will return it to you with an explanation as to its insufficiency. If the complaint meets the requirements, we will assign it a unique number and receipt date. We will mail you a notice that the complaint has been accepted. We will also mail the notice to all other concerned parties. We will make an initial determination of whether a Title III violation has occurred within 60 days after receiving the complaint. We will make a final determination of whether a violation occurred within 90 days after receiving the complaint. You have the right to request a hearing as part of this process. Hearings will be held at our offices in Austin, Texas. If we fail to make a final determination within 90 days after the original receipt of the complaint (or an extended period if we (1) determine that more time is required to resolve the issue and (2) you agree to the extension), you have the right to request resolution of the complaint under an alternative dispute resolution process as agreed upon by you, the Secretary of State, and the other parties to the dispute.

☛ **Do not detach this page. Complaint document will be numbered & dated in the upper right corner of this page when filed with this office.**

PERSON BRINGING COMPLAINT

Name _____ Home Phone _____ Work Phone _____
Address _____ County _____
City _____ State _____ Zip Code _____

PERSON OR ENTITY AGAINST WHOM COMPLAINT IS BROUGHT (limit one person/entity per form)

Name _____ Home Phone _____ Work Phone _____
Address _____ County _____
City _____ State _____ Zip Code _____

VIOLATION

If you believe that a violation of Title III of the Help America Vote Act of 2002 has occurred, is occurring or is about to occur, please state in the "Statement of Facts" section below the specific acts committed by the person or entity named in this complaint, along with a reference to the section of HAVA alleged to have been violated. If you need more space, please attach a separate sheet.

Violations of Title III of HAVA include, but are not limited to:

(1) failure to comply with federal voting system standards, which includes standards for accessibility for individuals with disabilities and alternate language accessibility [Section 301];

(2) failure to comply with provisional voting procedures [Section 302];

(3) failure to create and maintain statewide voter registration system [Section 303]; and

(4) failure to post required voter information at the polling place [Section 302(b)].

STATEMENT OF FACTS

State in your own words the detailed facts and circumstances that form the basis of your complaint, including any relevant person(s). In your narrative explanation, please include relevant dates and times and the names and addresses of other persons whom you believe have knowledge of the facts. Also, give any reasons that you feel the alleged violation was committed by the person and/or entity against whom this complaint is brought.

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STATEMENT OF FACTS (continued)

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Check here if additional pages are attached ☐

State of Texas
County of _____

I, the undersigned, under penalty of perjury do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge.

_____
Signature of Complainant

Sworn to and subscribed before me this _____ day of _____, 20_____.

_____
Signature of Officer Authorized to Administer Oaths or Notary Public

_____
(Print, Type, or Stamp Commissioned Name of Notary Public)

My Commission Expires:

_____

NOTICE: This complaint is not confidential and, once filed with the Texas Secretary of State, will be treated as a public record.

VERMONT ELECTIONS

ADMINISTRATIVE COMPLAINT PROCEDURE

I. **Authority:** In accordance with the provisions of 42 USC §15512(a) and 17 VSA §2458 this rule provides for a uniform, nondiscriminatory procedure for the resolution of a complaint alleging a violation of provisions of Title 17 of the Vermont Statutes or Title III of the Help America Vote Act of 2002 (HAVA). It is not intended to over-ride any specific provisions of Title 17 that provide for dispute resolution for specific aspects of Vermont elections (e.g. complaint in superior court for recounts).

II. **Definitions:**

A. "Complaint" means an allegation in writing that there is a violation of provisions of Title 17 of the Vermont Statutes or Title III of the HAVA that has occurred, is occurring or is about to occur in an election.
B. "Complainant" means any person filing a complaint in accordance with the provisions of paragraph III, below.
C. "Election" means a primary or general election in which a federal office appears on the ballot.
D. "Respondent" means any state or local elections official whose actions are alleged to be in violation of Title 17 or Title III.
E. "Secretary" means the Vermont Secretary of State or his or her designee.
F. "Title 17" means 17 V.S.A. sections 2451 - 2602.
G. "Title III" means Title III of the Help America Vote Act of 2002; 42 United States Code §§15281-15485.

III. **Complaints:** Any person who believes that a violation of provisions of Title 17 or Title III by any state or local election official has occurred, is occurring or is about to occur may file a complaint with the Secretary.

A. Complaints must be in writing, sworn under oath under penalty of perjury, signed by the complainant and notarized
B. Complaints must include the full name, telephone number and mailing address of the complainant.
C. Complaints must include a description of the alleged violation sufficient to make the Secretary and respondent aware of the nature and specifics of the complaint.
D. If a hearing on the record is requested, the complaint must so state.
E. The notarized complaint must be filed with the Secretary at 26 Terrace Street, Drawer 9, Montpelier, VT 05609-1101.
F. The complainant must also send a copy of the complaint to each respondent by first class U.S. mail.

IV. **Procedures:** The Secretary may process complaints in any of the following ways:

A. Dismiss the complaint and issue a final determination if the complaint does not comply with the requirements of paragraph III, above; or if the complaint does not, on its face, allege a violation of Title 17 or Title III with regard to an election.
B. Dismiss the complaint and issue a final determination if the complaint is not filed within sixty (60) days of the final certification of the federal election at which the alleged violation took place.
C. Resolve the complaint informally, and issue a final determination without a formal proceeding unless the complaint requests a hearing on the record.
D. Designate a hearing officer and schedule a date, time and place for a hearing on the record.
E. Consolidate multiple complaints into a single proceeding if the complaints relate to the same actions or events giving rise to the complaints, or the complaints raise common questions of law or fact.

V. **Hearing Procedures:** If requested in the complaint, and if no other summary action has occurred, the Secretary shall schedule a hearing as follows:

A. Written notice of the hearing shall be given to all parties setting out the date, time and place of the hearing. Notice shall be sent to the mailing addresses set out in the complaint. Notice must be sent by first class US mail at least seven (7) days prior to the date of the hearing.
B. The hearing shall be recorded. The audio recording shall constitute the official record of the hearing.
C. An extension of time for a hearing may be granted for good cause.
D. At the hearing all parties shall have the opportunity to be heard and to present evidence relevant to the determination of the complaint. Witnesses shall be sworn.
E. Any party may be represented by legal counsel.
F. If a complainant fails to appear at the hearing then the complaint shall be dismissed with prejudice.

VI. **Determination:**

A. A written determination on the complaint shall be made within ninety (90) days of the filing of the complaint.
B. A written determination shall be issued within ten (10) days of the conclusion of any hearing.
C. The determination shall be final. The determination may be appealed to the superior court in the county where an appellant resides.

VII. **Alternative Dispute Resolution:** If, for any reason, the Secretary does not make a final determination within ninety (90) days after the complaint was filed, or within any extension of time to which the complainant consents, the complaint shall be resolved under this section:

A. The Secretary shall immediately designate a three-member arbitration panel which shall consider the complaint and any record previously created and reach a final determination by majority vote of the panel. If no record has been created, or the record is incomplete, the panel may receive evidence in accordance with the provisions contained in paragraph V, above.

B. The panel shall issue a written, final determination within thirty (30) days of its designation.

C. The final determination of the panel may be appealed to the superior court in the county in which an appellant resides.

GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES
ELECTION SYSTEM OF THE VIRGIN ISLANDS
RULES AND REGULATIONS

PROCEDURES FOR THE UNIFORMED NON-DISCRIMINTORY
ADMINISTRATIVE COMPLAINT PROCEDURES

TITLE 18 SECTION 47(5) 1.1 PURPOSE AND AUTHORITY

Pursuant to P.L. 107-252 "Help America Vote Act 2002 section (254 & 402) and Title 18 section 47 subsection 5, the Election System of the Virgin Islands, establishes the following procedures for the conducting of the Joint Boards of Elections responsibilities in the administration and enforcement of Title 18, Chapter 3 Virgin Islands Code.

SECTION 47-2 NON-DISCRIMINATION POLICY STATEMENT

The voting population of the Virgin Islands is a community of people with respect for diversity. The Election System of the Virgin Islands emphasizes the dignity and equality common to all persons and adheres to a strict nondiscrimination policy regarding the treatment of individuals. In accord with federal law and applicable Virgin Islands statutes, the Election System of the Virgin Islands does not discriminate on the basis of race, color, religion, sex, national origin, ancestry, age, disability, or veteran status in employment or in any program or activity offered by the agency. The Election System of the Virgin Islands maintains a administrative complaint procedure incorporating full due process and an appeal process to any person who believes there is a violation of any provision of Title III, this includes a violation which has occurred, is occurring, or is about to occur.

SECTION 47- 3 FILING

(A) Filing of papers;

1. Any complaint filed under these procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint. Supporting documentation may accompany the complaint.

2. The Territory may consolidate complaints filed under section 47-3(1)

3. At the request of the complainant, there shall be a hearing on the record, this request shall be made at the time of filing of papers.

SECTION 47- 4 METHODS OF RESOLUTION AND PROCEDURES

(A) INFORMAL HEARING PROCEDURE;

1. The informal hearing is intended to affect a resolution of the matter by reconciling the parties' differences and/or rectifying the alleged action(s). If, after preliminary review of the matter, it is the judgment of the Supervisor of Elections that the Office of the Supervisor of Elections should not address the case, the informal procedure shall be terminated and the Supervisor of Elections shall advise the complainant of other available procedures that are available to them.

2. If the Supervisor of Elections finds that the Office of the Supervisor of Elections should address the complaint, the Supervisor of Elections will initiate the informal complaint procedure. The Supervisor of Elections may communicate directly with the respondent specifically outlining the alleged infractions and attempt to resolve the matter. If this resolves the complaint, no other person will be contacted. The Supervisor of Elections may also meet both parties, make inquiries to ascertain pertinent fact, and consult with others to facilitate the process. If, under this procedure, it is determined that there is a violation of any provision of Title III, an appropriate remedy shall be instituted. If, under this procedure, it is determined that there is no violation of any provision of Title III, the complaint shall be dismissed and the results of the procedures shall be published. If this option does not resolve the matter, all other options remain open to the complainant.

(B) FORMAL HEARING PROCEDURES;

1. The formal hearing procedure described below are established for those issues which remain unresolved after informal hearing has occurred, or in which the Supervisor of Election determines the alleged action is egregious to such a degree that a formal hearing is necessary.

(a) WRITTEN COMPLAINT

Any complaint filed under these procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint. Supporting documentation may accompany the complaint. The complaint must contain s detailed description of the action being complained about, the name of the alleged offender(s). Further, the complaint must confirm the veracity of the allegations.

(b) NOTIFICATION

Within ten (10) business days of the receipt of a signed complaint, the Supervisor of Elections will notify the respondent of the complaint. In providing notice to the parties, the Supervisor of Elections will identify the pertinent policies and procedures involved and will explain the investigative process and the rights and responsibilities of all parties. Notice will be delivered by hand or certified mail. A copy of the written complaint or statement will also be provided to the respondent. The respondent will be provided an opportunity to make a formal statement in rebuttal. The respondent has ten (10) business days after receipt of the complaint in which to respond to the allegations in the complaint in writing and submit the reply to the Supervisor of Elections.

Within ten (10) business days of the receipt of the reply, the Supervisor of Elections shall discuss the reply with the complainant, and ask both the complainant and respondent if they will enter into mediation to resolve the complaint. If so, the Supervisor of Elections will initiate the mediation process within fifteen (15) business days of receiving the reply.

(c) INVESTIGATION

If the complaint is unresolved, or if either party refuses to the Supervisor of Elections, or a qualified designee, will act as investigator. If the respondent elects not to participate in the formal resolution process, the case may be investigated without the respondent's involvement.

If, during the investigation, the complainant indicates a desire to withdraw the complaint, the case will be closed and the complainant will not be permitted to re-file the complaint, absent extraordinary circumstances. However, in cases where the investigation discloses a clear violation of Election System of the V.I. policy and/or territorial or federal statutory mandates, the Supervisor of Elections office will take action to address those violations regardless of the complainant's wishes. The Supervisor of Elections, or qualified designee, is authorized to contact any and all personnel and other individuals (e.g. individual, voter, candidates, agents, subcontractors, volunteers, or guests) who may have information relevant to the complaint. The Supervisor of Elections, or qualified designee, will have access to all relevant records. The investigator will maintain a written record of interviews and investigation. The Office of Supervisor of Elections retains this document as a permanent confidential record.

At the discretion of the District Chairman, the District Board of Elections may review (by hearing, if so requested) the circumstances of the case and provide the Supervisor of Elections with recommendations. The District Board of Elections shall determine hearing procedures and the constitution of the hearing committee.

The hearing procedures will be formal, and the purpose will be to permit both the complainant and respondent an opportunity to present their case.

(d) REPORT OF FINDINGS

Based on the findings of the investigation, the Supervisor of Elections shall prepare a report of findings which shall include: a description of the alleged acts, a summary of the evidence collected, an evaluation of the pertinent evidence, and a finding of probable cause or no probable cause as to whether the conduct constitutes a violation of the Election System of the Virgin Islands policies and procedures. If, under this procedure, the territory determines that there is a violation of any provision of title III, the territory shall provide the appropriate remedy. If, under this procedure, the territory determines that there is no violation the territory shall dismiss the complaint and publish the results of the procedure. Potential violations of the system's policies and procedures, which are discovered during the investigation but which are outside the jurisdiction of the Office of Supervisor of Elections, will be referred to the appropriate office or department for resolution. The final report will be issued within sixty (60) business days after the commencement of formal procedures. Again, the time may be extended by mutual agreement or as is permitted in this policy. Supervisor of Elections will provide copies of the report to the complainant, respondent and appropriate District Boards. The complainant and respondent will be advised of the appeal process at that time.

(e) FINAL DETERMINATION

When charges of a problem/violation are substantiated and probable cause is determined. The appropriate District Board, in consultation with the Supervisor of Elections, will render a determination regarding the proposed disciplinary and/or corrective action. The Supervisor of Elections input will be limited to issues presented in the case and specific questions regarding compliance with federal and territorial mandates. Decisions regarding corrective action shall be exclusively the province of the appropriate District Board. The District Board will be responsible for the implementation of all such disciplinary/corrective action. At a minimum, the action taken should be designed to protect the complainant from future any procedural or statutory violations. Consistent with the Election System's employee confidentiality policies, the complainant may not be fully advised of actions imposed. The District Board, in consultation with the Attorney General, will determine whether further hearing opportunities are required prior to determination of proposed discipline. The territory shall make a final determination with respect to the complaint prior to the expiration of the 90-day period, which begins on the date; the complaint is filed, unless the complainant consents to a longer period for making such a determination. If the territory fails to meet the deadline 90-day period, the complaint shall be resolved within 60 days under

alternative dispute resolution procedure. The record and other material from any proceeding conducted under the complaint procedures shall be made available for use under the alternative dispute resolution procedure.

(f) APPEAL PROCESS

If either party (complainant or respondent) is not satisfied with the outcome of the final determination, that person may appeal to the Joint Board of Elections. Any such appeal shall be in writing, stating the basis for the appeal, and shall be filed in the Office of the Supervisor of Elections within ten (10) business days of the date of the finding of no probable cause, or the date of the District Boards determination of proposed sanctions, whichever is appropriate. If there is no appeal within the time limit set forth, the finding of no probable cause shall become final, or the proposed sanctions will be imposed, as the case may be. When an appeal is filed, the Supervisor of Elections and/or the District Board shall forward information regarding the complaint to the Joint Boards of Elections, and the complainant or respondent may submit any further information as desired or requested. The Joint Boards of Elections shall, within ten (10) business days, communicate in writing to the complainant and respondent a decision with a copy to the Supervisor of Elections. The Board may refuse to hear the appeal, thereby affirming the findings of the District Board or Supervisor of Elections or, it may hear the appeal. The complainant and respondent will be notified, in writing, whether or not the Board will hear the appeal. The hearing may be formal or informal, and the time and place of such hearing shall be communicated within a reasonable time to all parties involved. Formal rules of evidence shall not apply. The Board or other member of the Board designated, as chair of the appeal committee shall control the appeal Board, or its designated committee, shall have access to all facts and information it believes relevant to the case. Counsel at the hearing may represent parties involved in the appeal. Upon conclusion of such hearings, the Board or its designated Committee shall render a decision in writing, and a copy will be provided to both complainant and respondent. That decision shall be final.

(g) Further Appeals;

Within thirty (30) days from the date the Board's decision order become final, any party aggrieved thereby may petition the Territorial Court of the Virgin Islands for review of the same. The appeal shall be taken in accordance with the rules of procedure of the Court and shall name the opposing party at the administrative level as the appellee. The Board or a duly designated agent should also be named to facilitate delivery of the administrative record to the Court.

SECTION 47-4 ALTERNATIVE DISPUTE RESOULTION PROCEDURE

(A) MEDIATION;

1. Mediation shall be the alternative dispute resolution procedure It is mandated pursuant to P.L. 107-252 section 402(1)(I). Upon preliminary review of the allegations, the Joint Board of Elections will determine whether the case is appropriate for mediation. Examples of those that may not be appropriate for mediation include complaints that involve discrimination against a group or class, reflects a pattern and practice of discrimination, or criminal violation. (This is not an exhaustive listing). If the complainant's selection of mediation is appropriate, the Supervisor of Election will initiate the mediation process within fifteen (15) business days. The Supervisor of Election may serve as the mediator or assign the case to a mediator. The mediator must be neutral, objective, and agreeable to both parties. The mediator will promptly arrange a meeting of both parties, during which the parties will develop a memorandum of understanding as to the purpose and goals and scheduling of the mediation sessions. The mediator will preserve this documentation. At the conclusion of the successful mediation, the parties will develop and the mediator will preserve an agreement for resolution of the complaint and future interactions between both parties. The written agreement will be signed by both parties and submitted to the Supervisor of Elections. The agreement will take effect immediately according to its own terms.

We hereby approve these rules and regulations as adapted by the Joint Boards of Elections at the regular meeting of May 19, 2004

Alecia M. Wells, Chairman
Joint Boards of Elections

Donna F. Roberts, Secretary
Joint Boards of Elections

DATED: This 19th day of May 2004

THE VIRGINIA STATE BOARD OF ELECTIONS

VIRGINIA VOTERS' ELECTION DAY COMPLAINT FORM

How to File a Complaint Using the Voter Grievance Process

If you feel your voting rights have been violated or that you may have witnessed an election law being broken, contact the State Board of Elections at 1-800-552-9745, or via email at info@sbe.virginia.gov.

First, review the "Voters' Rights and Responsibilities" poster in the polling place or on our web site (www.sbe.virginia.gov). Make sure you meet the requirements that allow you to vote. If you do not understand the requirements, ask an election official to explain them to you.

If you feel you met all the requirements but were still not allowed to vote, ask an election official to contact the Voter Registrar's office about your case ***before you leave the polling place.*** The Voter Registrar will investigate your case and may be able to resolve the problem immediately.

If you are still not satisfied with the outcome, call the State Board of Elections at 1-800-552-9745 as soon as possible, ***preferably before the polls close.*** The sooner the State Board knows about your problem, the more likely you will get a satisfactory answer on Election Day.

If you still believe your voting rights may have been violated or may be violated in the near future, you may file a formal complaint with the State Board of Elections. Inside are instructions on how to file a complaint, time lines and the route your complaint will follow.

NOTE: You have 10 days from the date of the incident to file a complaint.

How to file a complaint:

1. Fill out the Complaint Form (also available at www.sbe.virginia.gov). Provide as much information as possible so we can fully understand the nature of the problem.
2. Have the Complaint Form notarized.
3. Mail the signed and notarized form to:
   Deputy Secretary
   Virginia State Board of Elections
   200 N. 9th St., Suite 101
   Richmond, VA 23219

The State Board will review and address your complaint using the following process:

First Level of Resolution: The Deputy Secretary of the State Board of Elections

The Deputy Secretary has 15 days from the receipt of your complaint to:

- To determine if the complaint is valid and resolve it.
- If the complaint is not valid, the Deputy Secretary will list the reasons for this decision and inform you in writing of your right to use the Alternative Dispute Resolution Process (ADR).
- If there are several similar complaints then the Deputy Secretary may determine that the complaints can be resolved with a policy change. In this case, you will receive written notice of the steps taken to resolve the issue.

If you are unsatisfied with the Deputy Secretary's decision, you have 10 days from the date of the decision to appeal and use the second level (ADR.)

Second Level of Resolution: Alternative Dispute Resolution (ADR)

The ADR specialist has 30 days to resolve your issue. The ADR specialist will contact you to set up a meeting. At this meeting, the ADR specialist will assist the people in dispute to come up with a solution. If this recommendation does not satisfy everyone involved, you have 10 days to request a hearing before the full State Board of Elections.

Third Level of Resolution: Hearing before the State Board of Elections

If a Board meeting is not scheduled within 30 days, SBE will request additional time to hear the case. If you refuse the additional time request, the State Board of Elections will hold a special meeting to hear your complaint.

The Help America Vote Act of 2002, requires that all grievances submitted to the State Board of Elections be resolved within 90 days. As a result, the timelines listed above must be followed exactly or you risk losing your right to have your complaint resolved.

At the hearing, you will have the opportunity to present your case before the Board. The Board will then determine, by majority vote, if there is a violation of any provision of the voting rights outlined above.

The Board has the final say on all complaints filed. All complaints settled before the Board will be explained in full detail on State Board of Elections' website and in the Board minutes.

VIRGINIA VOTERS' ELECTION DAY COMPLAINT FORM

Ask an Election Official to help you if you need assistance completing this form.

Please write legibly.

Your Name (last, first, middle) Today's Date

Your Address (Number and Street) City State Zip Code

Your Daytime Telephone Number Email address (optional)

Polling Place Name

Polling Place Address (Number and Street) City State Zip Code

Name of Election Official or Volunteer if known

Date of Incident

Describe your Complaint

Your Signature

Notary's Signature Date

Notary's Commission Expiration Date

OFFICE USE ONLY

Complaint Number

Date Received

Date Sent to ADR Specialist

Hearing Date

Date Closed

Rev. 08/04

THE VIRGINIA STATE BOARD OF ELECTIONS

VIRGINIA VOTERS' ELECTION DAY COMPLAINT FORM

How to File a Complaint
Using the Voter Grievance Process

MAIL COMPLETED FORM TO:

DEPUTY SECRETARY
STATE BOARD OF ELECTIONS
COMMONWEALTH OF VIRGINIA
200 N. 9TH STREET, SUITE 101
RICHMOND, VIRGINIA 23219-3497

WASHINGTON

WSR 04-16-037

PERMANENT RULES

SECRETARY OF STATE

[Filed July 27, 2004, 1:44 p.m. , effective August 27, 2004]

Purpose: The rules will implement an administrative complaint procedure as required by the Help America Vote Act of 2002. The rules allow voters who feel that the provisions of Title III of the Help America Vote Act were not enforced when they tried to vote an avenue to make a complaint and have the situation remedied for the next election. The anticipated effect of the rule is to make sure that elections are run according to the requirements of federal law and that no one is disenfranchised through an act by an election official.

Statutory Authority for Adoption: RCW 29A.04.610.

Adopted under notice filed as WSR 04-13-016 on June 4, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 11, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 11, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 27, 2004.

Steven Excell

Assistant Secretary of State

OTS-7083.3

Chapter 434-263 WAC

ADMINISTRATIVE COMPLAINT PROCEDURE

NEW SECTION
WAC 434-263-005 Purpose. The purpose of these rules is to adopt an administrative complaint procedure mandated by 42 U.S.C. § 15512(a), relating only to state implementation of Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), for both state and federal elections. This process may not be used for the purpose of contesting the results of any primary or election. Election contests are governed by chapter 29A.68 RCW.

[]

NEW SECTION
WAC 434-263-010 Definitions. For purposes of this chapter, the following terms shall have the following meanings:

(1) "Complainant" means the person who files a complaint under this chapter.

(2) "Election" means a special, primary or general election.

(3) "Respondent" means any state or local election official whose actions are asserted, in a complaint under this chapter, to be in violation of Title III.

(4) "Secretary" means the secretary of state or his or her designee.

(5) "State or local election official" means the secretary of state, any county auditor, or any person employed by either the secretary or an auditor whose responsibilities include or directly relate to the administration of any election.

(6) "Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code §§ 15481-15485. Violations include, but are not limited to, voting system standards, provisional voting, accessibility for individuals with disabilities, and voter registration.

[]

NEW SECTION
WAC 434-263-020 Complaints. Any person who believes that there is a violation of any provision of Title III, including a violation which has occurred, is occurring, or is about to occur, by any state or local election official may file a complaint with the secretary under this chapter. All complaints must:

(1) Be in writing, sworn under oath, signed and notarized. A form is optional if it contains all the required elements;

(2) Include the complainant's name, telephone number and mailing address;

(3) Include a clear and concise description of the alleged violation of Title III that is detailed enough to let both the respondent and the secretary know what the complaint is about;

(4) Be filed with the secretary, with proof of mailing or delivery of a copy to each respondent, no later than thirty days after the certification of the election at issue.

(5) If a form is provided by the office of the secretary of state, the form shall be available in all languages required by the department of justice.

[]

NEW SECTION
WAC 434-263-030 Adoption of brief adjudicative proceedings. All complaints filed pursuant to this chapter shall be treated as brief adjudicative proceedings, and the secretary adopts RCW 34.05.482 through 34.05.494 to govern such proceedings. The secretary has determined that the interests involved in such complaints do not warrant the procedures of RCW 34.05.413 through 34.05.479. If a complaint is written in a language as provided in the Voting Rights Act of 1965, the office of the secretary of state shall obtain a translator to facilitate processing the complaint.

[]

NEW SECTION
WAC 434-263-040 Processing of complaint. (1) The secretary may process the complaint in any of the following ways:

(a) The secretary may dismiss the complaint, and issue a final determination, if it does not comply with WAC 434-263-020 or if it does not, on its face, allege a violation of Title III with regard to an election;

(b) The secretary may, with the agreement of the parties, resolve the matter informally, and issue a determination without formal proceedings; or

(c) The secretary may schedule the matter for a brief adjudicative proceeding. The secretary shall do so if the complaint is not dismissed pursuant to (a) of this subsection and a party so requests.

(2) The secretary may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.

[]

NEW SECTION

WAC 434-263-050 Brief adjudicative proceeding. (1) The secretary shall designate one or more people to act as presiding officer(s) of a brief adjudicative hearing. A presiding officer may be:

(a) The assistant or deputy secretary;

(b) The director of elections;

(c) The deputy director of the elections division;

(d) Any county auditor; or

(e) An administrative law judge.

The designee shall not be from an office named in the complaint.

(2) Before issuing a determination on the complaint, the presiding officer shall give each party an opportunity to explain the party's view of the matter, including an opportunity to be informed of the secretary's view of the matter if applicable. A determination may be based upon written submissions and documents, unless a party or the presiding officer requests a hearing on the record within ten days after the filing of the complaint.

(3) The presiding officer may schedule a hearing on the record:

(a) In person at a convenient location;

(b) By conference telephone call; or

(c) By such other method that permits the parties to hear and participate in the proceeding simultaneously.

Witnesses at a hearing shall be sworn upon oath. A party who requests a hearing but fails to make himself or herself available for hearing within the time available for initial determination shall be deemed to have waived the hearing.

(4) The presiding officer may permit or solicit the submission of written materials or oral presentations by persons who are not parties if the presiding officer determines that such submissions would be helpful in evaluating the complaint.

(5) The secretary shall establish and maintain the record of the proceedings as required by RCW 34.05.494. If a hearing on the record is conducted, the record shall include a transcript or audio recording of the hearing.

[]

NEW SECTION

WAC 434-263-060 Initial determination and remedies. (1) The presiding officer shall render a written initial decision within forty-five days after the complaint is filed, unless the complainant consents to a longer period. The determination shall include a statement as to whether, based upon a preponderance of the evidence, a violation of Title III has been established with regard to an election. If the presiding officer determines that a violation has occurred, the determination shall specify the appropriate remedy, if one exists. If the presiding officer determines that no violation has been established, the complaint shall be dismissed.

(2) The remedy awarded under this section shall be directed to the improvement of processes or procedures governed by Title III and must be consistent with state law. Remedies may include written findings that a violation of Title III has occurred and strategies for insuring that the violation does not occur again, as well as any other remedy available to the secretary under law. The remedy may not include any award of monetary damages, costs, penalties or attorney fees, and may not include the invalidation of any vote, ballot, primary or election. Remedies addressing the validity of any primary or election or of any ballot or vote may be obtained only as otherwise provided by law.

(3) The initial determination shall include a summary of the process for obtaining an administrative review and shall include notice that judicial review may be available.

[]

NEW SECTION

WAC 434-263-070 Administrative review. (1) Any aggrieved party may request an administrative review of the initial determination. If the secretary does not receive a request, in writing, for an administrative review within twenty-one days of service of the initial determination then the initial determination automatically becomes a final determination. If the parties have not requested an administrative review, the secretary may review the presiding officer's adjudication on his or her own motion as provided by RCW 34.05.491.

(2) The reviewing officer may be the secretary, the assistant or deputy secretary, or the director of elections, except that the same person may not serve as both the presiding officer and reviewing officer. The reviewing officer shall give each party an opportunity to explain the party's view of the matter, but must render a final determination within ninety days after the original filing of the complaint unless the complainant consents to a longer period. The determination of the reviewing officer is final and no further

administrative review is available. The final determination shall include notice that judicial review may be available.

[]

NEW SECTION

WAC 434-263-080 Alternative dispute resolution. (1) If a final determination is not rendered within forty-five days after the filing of the complaint, or within such additional time to which the complainant may consent, then the complaint shall be transferred to a board of arbitration, which must resolve the complaint within sixty additional days, which may not be extended. The board of arbitration shall be composed of three members, designated by the secretary, at least two of whom must be county auditors or election managers. No two members of the panel may be employed by the same office, agency or other employer.

(2) The arbitrators shall review the record compiled in proceedings prior to the transfer, including the tape or transcript of any hearing, but may not conduct any further hearing or receive any additional testimony, evidence, or other submissions. The arbitrators shall determine the appropriate resolution of the complaint by majority vote. No further administrative review is available, but the arbitrator's final determination shall include notice that judicial review may be available.

[]

NEW SECTION

WAC 434-263-090 Publication. All final determinations shall be posted on the secretary's website, lodged with the state library or state archives, and distributed to others upon request and upon payment of copying costs. Copies shall be provided to the parties at no cost.

[]

NEW SECTION

WAC 434-263-100 No necessity to exhaust administrative remedies. It is not necessary to exhaust any administrative remedies available under this chapter in order to pursue any other legal action provided by law.

Washington Secretary of State

Complaint Form

Under section 402(a)(2) of the Help America Vote Act of 2002 (HAVA), P.L. 107-252 and Washington Administrative Code, Chapter 434-263, any person who believes that a violation of any provision of Title III of HAVA has occurred, is occurring, or is about to occur, may file a complaint with the Office of the Secretary of State. This form may be used to file such complaints. However, a letter containing the below information will be considered an acceptable complaint as well. All complaints must be notarized and filed within thirty (30) calendar days of the date after the certification of the election at issue and sent to the Washington Secretary of State, Elections Division, Post Office Box 40229, Olympia, WA 98504-0229. The state shall make a final determination within 90 days of receiving the complaint.

Thank you for taking the time to make this complaint

A. Person Making Complaint

Last Name	First	Middle Initial

Street address			
City	County	State	Zip Code
Home Telephone Number ( )	Work Telephone Number ( )	Email Address (optional)	

B. Description of the Alleged Violation

Please identify:

1. The facts of the alleged violation
2. Witnesses, if any, and contact information if you have it
3. Date and time you became aware of the alleged violation
4. Location where the alleged violation occurred
5. Who is responsible for the alleged violation
6. Other information that you think will be helpful in resolving your complaint

HAVA Complaint Form 402 (August 2004)

WISCONSIN
2005 Wisconsin Statutes

5.061 Compliance with federal Help America Vote Act.

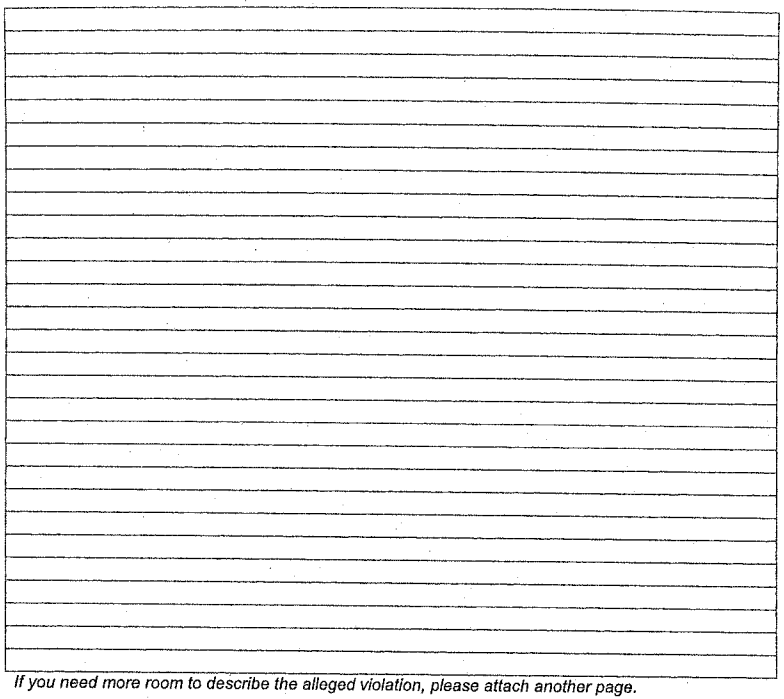
(1) Whenever any person believes that a violation of Title III of P.L. 107-252 has occurred, is occurring, or is proposed to occur with respect to an election for national office in this state, that person may file a written, verified complaint with the board.

(2) If the board receives more than one complaint under sub. (1) relating to the same subject matter, the board may consolidate the complaints for purposes of this section.

(3) A complainant under sub. (1) or any of the complainants in a consolidated complaint under sub. (2) may request a hearing and the matter shall then be treated as a contested case under ch. 227, except that the board shall make a final determination with respect to the merits of the complaint and issue a decision within 89 days of the time that the complaint or the earliest of any complaints was filed, unless the complainant, or each of any complainants whose complaints are consolidated, consents to a specified longer period.

(4) If the board finds the complaint to be without merit, it shall issue a decision dismissing the complaint. If the board finds that the violation alleged in the complaint has occurred, is occurring, or is proposed to occur, the board shall order appropriate relief, except that the board shall not issue any order under this subsection affecting the right of any person to hold an elective office or affecting the canvass of an election on or after the date of that election.

History: *2003 a. 265.*



If you need more room to describe the alleged violation, please attach another page.

I hereby certify that the information provided above is true and correct to the best of my knowledge.

_____
Complainant Signature

Please have a Notary Public complete the below section

Subscribed and sworn to (or affirmed) before me this _____ Day
Of _____, 20 _____.

_____
Notary Public

My Commission Expires on:

_____

[FR Doc. 05–17101 Filed 8–31–05; 8:45 am]
BILLING CODE 6820–KF–C

Federal Register

Thursday,
September 1, 2005

Part III

Department of Veterans Affairs

38 CFR Parts 41 and 49

Audits of States, Local Governments, and Non-Profit Organizations; Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 41 and 49

RIN 2900–AJ62

Audits of States, Local Governments, and Non-Profit Organizations; Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends VA's regulations to codify the provisions of revised OMB Circular A–133. That circular provides standards for consistency and uniformity among Federal agencies for the audits of States, local governments, and non-profit organizations expending Federal awards. Further, this document codifies the provisions of former OMB Circular A–110. That rule provides for uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations. Codification of these provisions allows VA to execute these standards and requirements through the establishment of binding rules.

DATES: *Effective Date:* October 3, 2005.

FOR FURTHER INFORMATION CONTACT: John Corso, Management Systems Improvement Service, (008B3), Office of Policy, Planning, and Preparedness, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–5927. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 25, 2004, (69 FR 52333), we proposed to revise part 41 of VA's regulations to codify the provisions of revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' Further, we proposed to add part 49 to implement provisions of former OMB Circular A–110.

We asked interested parties to submit comments on or before October 25, 2004. We received no comments.

In reviewing our proposed rule, we discovered several technical oversights, which we are correcting in this final rule as explained below. In § 41.230(b)(2), we are substituting ''§ 41.200(d)'' for ''§ 50.200(d)'' as there is no section 50.200(d). In § 41.320(b)(2)(vi)–(viii), we are deleting ''of OMB Circular A–133'' to clarify that we are referring to sections in part 41 of the title 38 regulations rather than the circular. In§ 49.16 for clarity, we are inserting ''codified at'' after ''Public Law 94–580.'' In § 49.52, we are moving the third sentence of paragraph (a)(2)(iv), as proposed, into a separate paragraph (a)(2)(v) so that it mirrors the corresponding paragraph in 2 CFR part 215. *See* 2 CFR 215.52(a)(2)(v). We are revising the first line of § 49.61(a) to read ''[a]wards may be terminated in whole or in part only if paragraphs (a)(1), (a)(2) or (a)(3) of this section apply,'' so that it would be consistent with the corresponding provision in 2 CFR part 215. *See* 2 CFR 215.61(a). The proposed rule incorrectly suggested that awards could be terminated only if all the conditions in paragraphs (a)(1)–(3) applied. We are revising the caption of Appendix A to Part 49, which had incorrectly referred to ''Part 59'' in the proposed rule.

We are revising the authority citations applicable to all of parts 41 and 49 to more accurately reflect VA's authority to issue these rules. The authority for part 49 will read as follows:

Authority: 5 U.S.C. 301; 38 U.S.C. 501, OMB Circular A–110 (2 CFR part 215), and as noted in specific sections.

The authority for part 41 will read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 7501 *et seq.*; 38 U.S.C. 501, OMB Circular A–133, and as noted in specific sections.

As stated in the notice of proposed rulemaking, the provisions in part 49 are intended to reproduce in title 38 the provisions of OMB Circular A–110, which OMB has codified in 2 CFR part 215. After publishing the proposed rules, we learned that OMB's regulations in 2 CFR 215.36 inadvertently omitted certain provisions in the corresponding portions of OMB circular A–110 and that OMB is preparing an amendment to its regulations to correct that oversight. OMB has advised that our regulations should follow the provisions in OMB Circular A–110, which is binding on VA and all Federal agencies. Accordingly, this final rule incorporates the provisions of OMB Circular A–110 that were inadvertently omitted from 2 CFR 215.36. To accomplish this, we are making minor revisions to § 49.36(c), as proposed; adding a new § 49.36(d); and moving proposed § 49.36(d) to § 49.36(e). This new material merely reiterates the existing requirements of OMB Circular A–110, which is currently binding on VA. Accordingly, the provisions added to this final rule will effect no change in existing law or procedure and an additional period of public comment is unnecessary with respect to these changes.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local or tribal governments, or the private sector.

Paperwork Reduction Act

OMB approved the information collection associated with OMB Circular A–133 (§§ 41.235, 41.320, and 41.505 of this proposed rule) under control number 0348–0057. OMB approved the information collection associated with OMB Circular A–110 (codified at 2 CFR part 215) and contained in SF–269, SF–269A, SF–270, SF–272, and SF–272A (§ 49.52 of this final rule) under control numbers 0348–0004, 0348–0003, 0348–0038, 0348–0039. Discussion of the information collection request was published in the **Federal Register** both as a first notice for public notice and comment on November 5, 1996 (61 FR 57232) and as a second notice advising of submission to OMB for approval on June 30, 1997 (62 FR 35302).

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. This rule facilitates implementation of the already existing requirements of OMB Circular A–110 and OMB Circular A–133 and does not create or change any responsibilities. Therefore, pursuant to 5 U.S.C. 605(b), the final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers for this document are 64.005, 64.015, 64.024, 64.203.

List of Subjects in 38 CFR Parts 41 and 49

Accounting, Grant programs, Indians, Intergovernmental relations, Loan programs.

Approved: May 10, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR Chapter 1 is amended as set forth below:

■ 1. Part 41 is revised to read as follows:

PART 41—AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

Subpart A—General

Subpart B—Audits

Subpart C—Auditees

Subpart D—Federal Agencies and Pass-Through Entities

Subpart E—Auditors

Authority: 5 U.S.C. 301; 31 U.S.C. 7501 *et seq.*; 38 U.S.C. 501, OMB Circular A–133, and as noted in specific sections.

Subpart A—General

§ 41.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.105 Definitions.

Audit finding means deficiencies which the auditor is required by § 41.510(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under this part.

Auditor means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

CFDA number means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. ''Other clusters'' are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an ''other cluster,'' a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 41.400(d)(1) and § 41.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § 41.520, and, with the exception of R&D as described in § 41.200(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 41.400(a).

Compliance supplement refers to the Circular A–133 Compliance Supplement, included as Appendix B to Circular A–133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Federal agency has the same meaning as the term agency in section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § 41.205(h) and § 41.205(i).

Federal program means:

(1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) ''Other clusters,'' as described in the definition of cluster of programs in this section.

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as

eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of financial reporting; and

(3) Compliance with applicable laws and regulations.

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process—effected by an entity's management and other personnel—designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

(1) Transactions are properly recorded and accounted for to:

(i) Permit the preparation of reliable financial statements and Federal reports;

(ii) Maintain accountability over assets; and

(iii) Demonstrate compliance with laws, regulations, and other compliance requirements;

(2) Transactions are executed in compliance with:

(i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and

(ii) Any other laws and regulations that are identified in the compliance supplement; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 41.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § 41.215(c).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

(1) Any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

OMB means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § 41.400(b). A Federal agency with oversight for an auditee may reassign oversight to another Federal agency, which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment.

Pass-through entity means a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

Program-specific audit means an audit of one Federal program as provided for in § 41.200(c) and § 41.235.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. *Development* is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Single audit means an audit, which includes both the entity's financial statements, and the Federal awards as described in § 41.500.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity, which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 *et seq.*) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § 41.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: Activities allowed or unallowed; allowable costs/cost principles; cash

management; eligibility; matching, level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § 41.210.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart B—Audits

§ 41.200 Audit requirements.

(a) *Audit required.* Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § 41.205.

(b) *Single audit.* Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with § 41.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 41.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than $500,000.* Non-Federal entities that expend less than $500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § 41.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.205 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at institutions of higher education.* When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds, which are federally restricted, are considered awards expended in each year in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.210 Subrecipient and vendor determinations.

(a) *General.* An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) *Federal award.* Characteristics indicative of a Federal award received by a subrecipient are when the organization:

(1) Determines who is eligible to receive what Federal financial assistance;

(2) Has its performance measured against whether the objectives of the Federal program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable Federal program compliance requirements; and

(5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) *Payment for goods and services.* Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program.

(d) *Use of judgment in making determination.* There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) *Compliance responsibility for vendors.* In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions, which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.215 Relation to other audit requirements.

(a) *Audit under this part in lieu of other audits.* An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (*e.g.,* financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) *Federal agency to pay for additional audits.* A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) *Request for a program to be audited as a major program.* A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 41.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

(a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs;

(c) Suspending Federal awards until the audit is conducted; or

(d) Terminating the Federal award.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.230 Audit costs.

(a) *Allowable costs.* Unless prohibited by law, the cost of audits made in accordance with the provisions of this part is allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) *Unallowable costs.* A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 *et seq.*) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity, which has Federal awards, expended of less than $500,000 per year and is thereby exempted under

§ 41.200(d) of this chapter from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with § 41.400(d)(3), provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.235 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 41.315(b), and a corrective action plan consistent with the requirements of § 41.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements § 41.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § 41.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § 41.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 41.505(d)(1) and findings and questioned costs consistent with the requirements of § 41.505(d)(3).

(c) *Report submission for program-specific audits.* (1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § 41.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 41.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § 41.320(e)(2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) Other sections of this part may apply. Program-specific audits are subject to § 41.100 through § 41.215(b), § 41.220 through § 41.230, § 41.300 through § 41.305, § 41.315, § 41.320(f) through § 41.320(j), § 41.400 through § 41.405, § 41.510 through § 41.515, and other referenced provisions of this part unless contrary to the provisions of this

section, a program-specific audit guide, or program laws and regulations.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart C—Auditees

§ 41.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 41.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § 41.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 41.315(b) and § 41.315(c), respectively.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.305 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, auditees shall follow the procurement standards prescribed by part 43 of this chapter, OMB Circular A–110 (codified at 2 CFR part 215), ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,'' or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in part 43 of this chapter, OMB Circular A–110 (codified at 2 CFR part 215), or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.310 Financial statements.

(a) *Financial statements.* The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 41.500(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year-end. While not required, it is preferable to present this information in the schedule.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.315 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under § 41.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of

prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.320 Report submission.

(a) *General.* The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) *Data Collection.* (1) The auditee shall submit a data collection form, which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (*e.g.*, State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

(i) The type of report the auditor issued on the financial statements of the auditee (*i.e.*, unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.

(iii) A statement as to whether the audit disclosed any noncompliance, which is material to the financial statements of the auditee.

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.

(v) The type of report the auditor issued on compliance for major programs (*i.e.*, unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(vi) A list of the Federal awarding agencies, which will receive a copy of the reporting package pursuant to § 41.320(d)(2).

(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under § 41.530.

(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in § 41.520(b).

(ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.

(x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:

(A) Activities allowed or unallowed.
(B) Allowable costs/cost principles.
(C) Cash management.
(D) Davis-Bacon Act.
(E) Eligibility.
(F) Equipment and real property management.
(G) Matching, level of effort, earmarking.
(H) Period of availability of Federal funds.
(I) Procurement and suspension and debarment.
(J) Program income.
(K) Real property acquisition and relocation assistance.
(L) Reporting.
(M) Subrecipient monitoring.
(N) Special tests and provisions.

(xiii) Auditee name, employer identification number(s), name and title of certifying official, telephone number, signature, and date.

(xiv) Auditor name, name and title of contact person, auditor address, auditor telephone number, signature, and date.

(xv) Whether the auditee has either a cognizant or oversight agency for audit.

(xvi) The name of the cognizant or oversight agency for audit determined in accordance with § 41.400(a) and § 41.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the data elements prescribed by OMB.

(c) *Reporting package.* The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 41.310(a) and § 41.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in § 41.315(b);

(3) Auditor's report(s) discussed in § 41.505; and

(4) Corrective action plan discussed in § 41.315(c).

(d) *Submission to clearinghouse.* All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) *Additional submission by subrecipients.* (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) When a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) *Requests for report copies.* In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) *Report retention requirements.* Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) *Clearinghouse responsibilities.* The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and § 41.235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) *Clearinghouse address.* The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) *Electronic filing.* Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart D—Federal Agencies and Pass-Through Entities

§ 41.400 Responsibilities.

(a) *Cognizant agency for audit responsibilities.* Recipients expending more than $50 million a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment. The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000). Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the report submission due date required by § 41.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § 41.220, consider auditee requests to qualify as a low-risk auditee under § 41.530(a).

(b) *Oversight agency for audit responsibilities.* An auditee, which does not have a designated cognizant agency for audit, will be under the general oversight of the Federal agency determined in accordance with § 41.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) *Federal awarding agency responsibilities.* The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) *Pass-through entity responsibilities.* A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending $500,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.405 Management decision.

(a) *General.* The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) *Federal agency.* As provided in § 41.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 41.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) *Pass-through entity.* As provided in § 41.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) *Time requirements.* The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) *Reference numbers.* Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § 41.510(c).

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart E—Auditors

§ 41.500 Scope of audit.

(a) *General.* The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) *Financial statements.* The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) *Internal control.* (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in

paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with § 41.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 41.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data Collection Form.* As required in § 41.320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs, which shall include the following three components:

(1) A summary of the auditor's results, which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (*i.e.*, unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance, which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (*i.e.*, unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings, which the auditor is required to report under § 41.510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 41.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 41.530.

(2) Findings relating to the financial statements, which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in § 41.510(a).

(i) Audit findings (*e.g.*, internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.510 Audit findings.

(a) *Audit findings reported.* The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions, which are

individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs, which are greater than $10,000, for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than $10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs, which are greater than $10,000, for a Federal program, which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program, which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (*e.g.*, as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 41.315(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail.* Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.515 Audit working papers.

(a) *Retention of working papers.* The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) *Access to working papers.* Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.520 Major program determination.

(a) *General.* The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) *Step 1.* (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) $300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed $300,000 but are less than or equal to $100 million.

(ii) $3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $100 million but are less than or equal to $10 billion.

(iii) $30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § 41.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) *Step 2.* (1) The auditor shall identify Type A programs, which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § 41.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § 41.510(a)(3) and § 41.510(a)(4), fraud under § 41.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § 41.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § 41.525(c), § 41.525(d)(1), § 41.525(d)(2), and § 41.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the end of the fiscal year to be audited of OMB's approval.

(d) *Step 3.* (1) The auditor shall identify Type B programs, which are high-risk, using professional judgment and the criteria in § 41.525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § 41.525(b)(1), § 41.525(b)(2), and § 41.525(c)(1), a single criteria in § 41.525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) $100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to $100 million in total Federal awards expended.

(ii) $300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than $100 million in total Federal awards expended.

(e) *Step 4.* At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) *Option 1.* At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) *Option 2.* One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B) of this section, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) *Percentage of coverage rule.* The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § 41.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) *Documentation of risk.* The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) *Deviation from use of risk criteria.* For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.525 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring, which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program

with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (*e.g.*, one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity, which disclosed no significant problems, would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs, which are higher risk. OMB plans to provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.530 Criteria for a low-risk auditee.

An auditee, which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods), shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 41.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control, which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Appendix A to Part 41—Data Collection Form (Form SF–SAC)

Note: Data Collection Form SF–SAC and instructions for its completion may be obtained from the following Web page: *http://harvester.census.gov/fac/collect/sfsac_01.pdf*. It is also available from the address provided in § 41.320(i).

Appendix B to Part 41—OMB Circular A–133 Compliance Supplement

Note: OMB Circular A–133 Compliance is available on the OMB home page at *http://www.whitehouse.gov/ omb/grants/ grants_circulars.html*.

■ 2. Part 49 is added to read as follows:

PART 49—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

Subpart A—General

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial and Program Management

Authority: 5 U.S.C. 301; 38 U.S.C. 501, OMB Circular A–110 (2 CFR part 215), and as noted in specific sections.

Subpart A—General

§ 49.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in §§ 49.4, and 49.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share of real property, equipment, or supplies* means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and

patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 49.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) ($100,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance, which is excluded from the definition of ''award'' in paragraph (e) of this section.

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR 401.2(d)

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, ''Debarment and Suspension.''

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations, for financial reports prepared on a cash basis*, means the amount of obligations incurred by the recipient that have not

been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount, which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 49.4.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements, which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations in part 43 of this chapter.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart B—Pre-Award Requirements

§ 49.10 Purpose.

Sections 49.11 through 49.17 prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with part 44 of this chapter, which restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.14 Special award conditions.

If an applicant or recipient has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where

the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, ''Metric Usage in Federal Government Programs.''

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.16 Resource Conservation and Recovery Act (RCRA).

Under the RCRA (Pub. L. 94–580, codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.17 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart C—Post-Award Requirements

Financial and Program Management

§ 49.20 Purpose of financial and program management.

Sections 49.21 through 49.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.21 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 49.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described in paragraphs (a) through (d) of this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 49.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless either of the following conditions apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless any of the following conditions apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs.''

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of the following.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if either of the following conditions apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (*e.g.*, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 49.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 49.30 through 49.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and

Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Educational Institutions,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (*i.e.*, the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever any of the following conditions apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 49.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in

writing of the date when the recipient may expect the decision.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.29 Conditional exemptions.

(a) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(b) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A–87 (Attachment A, subsection C.3), ''Cost Principles for State, Local, and Indian Tribal Governments,'' A–21 (Section C, subpart 4), ''Cost Principles for Educational Institutions,'' and A–122 (Attachment A, subsection A.4), ''Cost Principles for Non-Profit Organizations,'' and from all of the administrative requirements provisions of OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' and part 43 of this chapter.

(c) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A–87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: Funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Property Standards

§ 49.30 Purpose of property standards.

Sections 49.31 through 49.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 49.31 through 49.37.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.32 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the

purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (*i.e.*, awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (*e.g.*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals.'') Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) *Exempt property.* When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is ''exempt property.'' Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency, which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to an FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 522(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material

excludes physical objects (*e.g.,* laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the Federal Government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 49.34(g).

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Procurement Standards

§ 49.40 Purpose of procurement standards.

Sections 49.41 through 49.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.41 Recipient responsibilities.

The standards contained in §§ 49.41 through 49.48 do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that all of the following conditions apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features, which unduly restrict competition.

(ii) Requirements, which the bidder/offeror must fulfill, and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in

terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (*e.g.*, fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid

bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Reports and Records

§ 49.50 Purpose of reports and records.

Sections 49.51 through 49.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 49.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 49.51(f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 49.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 49.53(g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Termination and Enforcement

§ 49.60 Purpose of termination and enforcement.

Sections 49.61 and 49.62 set forth uniform suspension, termination and enforcement procedures.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1), (a)(2) or (a)(3) of this section apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in

which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 49.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 49.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination, which are necessary and not reasonably avoidable, are allowable if the following conditions apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see § 49.13).

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart D—After-the-Award Requirements

§ 49.70 Purpose.

Sections 49.71 through 49.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 49.31 through 49.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(Authority: Pub. L. 104–156, OMB Circular A–110)

§ 49.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 49.26.

(4) Property management requirements in §§ 49.31 through 49.37.

(5) Records retention as required in § 49.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 49.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by any of the following methods.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Appendix A to Part 49—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

[FR Doc. 05–16848 Filed 8–31–05; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
September 1, 2005

Part IV

The President

Proclamation 7921—National Alcohol and Drug Addiction Recovery Month, 2005

Federal Register
Vol. 70, No. 169
Thursday, September 1, 2005

Presidential Documents

Title 3—

The President

Proclamation 7921 of August 29, 2005

National Alcohol and Drug Addiction Recovery Month, 2005

By the President of the United States of America

A Proclamation

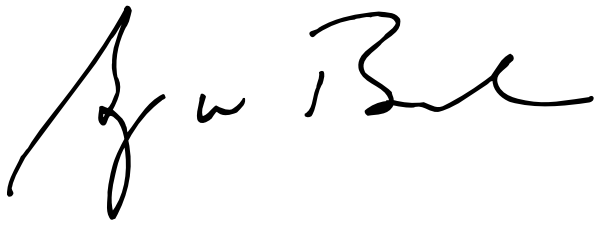
The devastating effects of alcohol and drug addiction have destroyed the lives and families of countless Americans. During National Alcohol and Drug Addiction Recovery Month, we recognize the dangers of substance abuse and renew the hope of overcoming addiction for individuals across our Nation. This year's theme, ''Join the Voices for Recovery: Healing Lives, Families and Communities,'' encourages those striving to recover from this disease and recognizes the many families, support organizations, faith-based and community groups, and volunteers working to help overcome addiction.

Substance abuse leads to a cycle of addiction and despair that too often causes disease and death among young people. The Helping America's Youth initiative, led by First Lady Laura Bush, is promoting positive youth development and combating alcohol and drug addiction. This initiative is helping our children to make healthy choices and build lives of purpose. To aid citizens seeking treatment and recovery for substance abuse, my Administration also has provided $200 million over the past 2 years for the Access to Recovery program. My 2006 budget requests an additional $150 million for this program to further expand treatment choices. Directing resources to individuals allows them to choose a program that suits their needs and increases their chances of success. In addition, we have increased opportunities for communities and faith-based providers to aid those suffering from addiction.

I encourage all Americans to support individuals striving to overcome addiction and the groups that are helping to fight alcohol and drug addiction. By working together, we can continue to build a more compassionate society that transforms lives and provides health, hope, and healing to those who hurt.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2005 as National Alcohol and Drug Addiction Recovery Month. I call upon the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of August, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–17573
Filed 8–31–05; 9:05 am]
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CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Cut flowers from countries with chrysanthemum white rust; comments due by 9-6-05; published 7-7-05 [FR 05-13313]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3423/P.L. 109–43

Medical Device User Fee Stabilization Act of 2005 (Aug. 1, 2005; 119 Stat. 439)

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Upper White Salmon Wild and Scenic Rivers Act (Aug. 2, 2005; 119 Stat. 443)

H.R. 481/P.L. 109–45

Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

H.R. 541/P.L. 109–46

To direct the Secretary of Agriculture to convey certain

land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47

Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48

To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49

Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States. (Aug. 2, 2005; 119 Stat. 457)

S. 571/P.L. 109–50

To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the ''Congresswoman Shirley A. Chisholm Post Office Building''. (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the ''Boone Pickens Post Office''. (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52

To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the ''Brian P. Parrello Post Office Building''. (Aug. 2, 2005; 119 Stat. 461)

H.R. 3045/P.L. 109–53

Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Aug. 2, 2005; 119 Stat. 462)

H.R. 2361/P.L. 109–54

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 499)

H.R. 2985/P.L. 109–55

Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57

Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 2005

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Sept 1	Sept 16	Oct 3	Oct 17	Oct 31	Nov 30
Sept 2	Sept 19	Oct 3	Oct 17	Nov 1	Dec 1
Sept 6	Sept 21	Oct 6	Oct 21	Nov 7	Dec 5
Sept 7	Sept 22	Oct 7	Oct 24	Nov 7	Dec 6
Sept 8	Sept 23	Oct 11	Oct 24	Nov 7	Dec 7
Sept 9	Sept 26	Oct 11	Oct 24	Nov 8	Dec 8
Sept 12	Sept 27	Oct 12	Oct 27	Nov 14	Dec 12
Sept 13	Sept 28	Oct 13	Oct 28	Nov 14	Dec 12
Sept 14	Sept 29	Oct 14	Oct 31	Nov 14	Dec 13
Sept 15	Sept 30	Oct 17	Oct 31	Nov 14	Dec 14
Sept 16	Oct 3	Oct 17	Oct 31	Nov 15	Dec 15
Sept 19	Oct 4	Oct 19	Nov 3	Nov 18	Dec 19
Sept 20	Oct 5	Oct 20	Nov 4	Nov 21	Dec 19
Sept 21	Oct 6	Oct 21	Nov 7	Nov 21	Dec 20
Sept 22	Oct 7	Oct 24	Nov 7	Nov 21	Dec 21
Sept 23	Oct 11	Oct 24	Nov 7	Nov 22	Dec 22
Sept 26	Oct 11	Oct 26	Nov 10	Nov 25	Dec 27
Sept 27	Oct 12	Oct 27	Nov 14	Nov 28	Dec 27
Sept 28	Oct 13	Oct 28	Nov 14	Nov 28	Dec 27
Sept 29	Oct 14	Oct 31	Nov 14	Nov 28	Dec 28
Sept 30	Oct 17	Oct 31	Nov 14	Nov 29	Dec 29